THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy

RECEIVED
JUN 23 2022
SC Court of Appeals

Case No.: 2007-CP-10-01444
App. Case No.: 2020-000968

Cynthia Holmes, M.D. .....Respondent/Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., is the Appellant.....Appellant/Respondent.

AMENDED RECORD ON APPEAL
VOLUME 1 of 2
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

Case No.: 2002-CP-10-1448

J. DOE versus **MANTON GRIER, JAMES Y. BECKER, and SINKLER & BOYD, P.A.**

Plaintiff Defendant

CHECK ONE:

[ ] **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

[X] **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] **ACTION DISMISSED (CHECK REASON):** [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP (Vol. nonsuit) [ ] Rule 43(k), SCRCP(Settled); [ ] Other - _____

[ ] **ACTION STRICKEN (CHECK REASON):** [ ] Rule 40(j),SCRCP; [ ] Bankruptcy; [ ] Other - _____

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by Court

DEFENDANT'S MOTION FOR CHANGE OF VENUE TO RICHLAND COUNTY IS GRANTED. ALL MOTIONS ARE RESERVED FOR TRIAL JUDGE.

Dated at Charleston, South Carolina, JULY 22, 2002

Date Judge

This judgment was entered on the _____ Day of _____, 200__, and a copy mailed first class this _____ Day of _____, 200__, to attorneys of record or to parties (when appearing pro-se) as follows:

PRO-SE

Attorney(s) for Plaintiff(s)

JOHN S. WILKERSON

Attorney(s) for Defendant(s)

2002 JUL 24 AM 11:53
JULIE ARMSTRONG
CLERK OF COURT
BY

Clerk of Court

SCRP Form 4(Rev. 2/96)

In with Richland County 3-29-02 001

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

2007-CP-10-1444

Case No 2002-CP-10-1448

J DOE

~~04CP403419~~ VERSUS MANTON GRIER, JAMES Y BECKER, and SINKLER & BOYD, P A

Plaintiff

~~02CP403705~~ Defendant

FILED
2002 AUG 1 AM 10
BARBARA G SCOTT
C C & G S

CHECK ONE

[ ] JURY VERDICT This action came before the court for a trial by jury The issues have been tried and the verdict has been rendered.

[X] DECISION BY COURT This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

[ ] ACTION DISMISSED (CHECK REASON) [ ] Rule 12(b), SCRCP, [ ] Rule 41(a), SCRCP (Vol nonsuit) [ ] Rule 43(k), SCRCP(Settled), [ ] Other -

[ ] ACTION STRICKEN (CHECK REASON) [ ] Rule 40(j),SCRCP, [ ] Bankruptcy, [ ] Other

IT IS ORDERED AND ADJUDGED [ ] See attached order, [ ] Statement of Judgment by Court

DEFENDANT'S MOTION FOR CHANGE OF VENUE TO RICHLAND COUNTY IS GRANTED ALL other MOTIONS ARE RESERVED FOR TRIAL JUDGE

Dated at Charleston, South Carolina, JULY 22, 2002

Date

Judge

This judgment was entered on the _____ Day of _____, 200__, and a copy mailed first class this _____ Day of _____, 200__, to attorneys of record or to parties (when appearing pro-se) as follows

PRO-SE

Attorney(s) for Plaintiff(s)

FILED
APR 06 2007
JULIE J. ARMSTRONG
CLERK OF COURT

JOHN S. WILKERSON

Attorney(s) for Defendant(s)

FILED
2002 JUL 24 AM 11 53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Clerk of Court

SCRP Form 4(Rev 2/96)

ATTEST A TRUE COPY
JULIE J ARMSTRONG (SEAL)
CLERK C.P. & G.S.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CYNTHIA HOLMES, M.D.

Plaintiff,

vs.

HAYNSWORTH, SINKLER & BOYD, P.A., successor to SINKLER & BOYD, P.A., MANTON GRIER, and JAMES Y. BECKER,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
DOCKET NO. 07-CP-10-1444

FILED
2009 JUL 14 PM 12:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER

This matter came before the Court on Defendants' Motion for Directed Verdict pursuant to Rule 50, SCRCP, made at the close of all evidence following trial that began on June 8, 2009. Having heard all evidence presented, and viewing that evidence in the light most favorable to the Plaintiff, this Court finds that only one reasonable inference may be drawn from the evidence and that no jury issue was created. On that basis, and as set forth more fully below, Defendants' Motion is hereby **GRANTED** and judgment is entered in their favor on all counts.

Plaintiff's complaint centered around her allegations that the Defendants committed legal malpractice in representing her in a lawsuit she brought in 1999 in the United States District Court for the District of South Carolina, Charleston Division, against Tenet HealthSystems Medical, Inc. and East Cooper Community Hospital, Inc. (hereinafter sometimes collectively referred to as the "East Cooper Hospital") alleging violations of the Sherman Antitrust Act and asserting a number of supplemental claims under state law. At the conclusion of all the evidence, this Court orally granted a directed verdict against Plaintiff and in favor of all Defendants on all of Plaintiff's claims. The Court now issues this Order to set forth the reasons

#4 T.L.K.

supporting the Court's decision to grant a directed verdict.

In ruling on a motion for a directed verdict, the court does not weigh the evidence but rather is called on to determine whether the evidence viewed in the light most favorable to the non-moving party, will support a jury verdict in that party's favor. In performing this task, the court has concluded that the evidence is susceptible to but one reasonable inference, that Defendants are entitled to judgment in their favor as a matter of law.

FACTUAL BACKGROUND

Plaintiff, an ophthalmologist whose office and residence are located on Sullivan's Island, initially retained Sinkler & Boyd, P.A. to appeal the recommendation by the East Cooper Hospital's Credentialing and Medical Executive committees to alter the level of her staff privileges at the East Cooper Hospital from Active Staff to Consulting Staff based upon Plaintiff's failure to comply with the Medical Staff Bylaws' requirements for either Active or Courtesy staff privileges. Plaintiff signed a written engagement letter dated May 5, 1998, setting forth the terms of the parties' engagement, which called for Plaintiff to pay fees based on hourly rates and charges to be billed.

Plaintiff pursued her administrative appeal regarding her privileges and East Cooper Hospital's Governing Board finally denied Plaintiff's appeal, concluding the administrative proceedings. Thereafter, Plaintiff authorized Defendants to commence a suit in the federal court to challenge the hospital's decision to reduce her staff privileges[1]. The federal complaint sets forth a number of federal claims, of which only the antitrust claims under Sections 1 & 2 of the Sherman Act are at issue in this case. The gravamen of the Plaintiff's antitrust claim is the

#2 T.C.H.

1 The Defendants cautioned Dr. Holmes orally and in writing that there were problems associated with her federal claims and in bringing her case in the federal, as opposed to the state court. *E.g.*, letter from James Becker to Dr. Holmes dated December 27, 1999. The Defendants likewise specifically declined to present a rule-of-reason case because of the problems involved.

bylaw adopted by the hospital and medical staff that requires a physician to have a minimum of 24 patient contacts at the hospital during the preceding twelve months in order to maintain his or her Active Staff privileges. Plaintiff also challenged the adoption of a bylaw that required physicians holding Courtesy Staff privileges to show that they possessed Active Staff privileges at another hospital. The federal complaint also alleged a number of supplemental claims based on state law.[2]

The facts leading up to the filing of Plaintiff's federal lawsuit are set forth in the Order of the Hon. Patrick Michael Duffy dated April 17, 2000, granting the East Cooper Hospital's Motion for Summary Judgment in the federal court case. Thereafter, Plaintiff, who is a lawyer licensed to practice in South Carolina, appealed Judge Duffy's order to the United States Court of Appeals for the Fourth Circuit, which affirmed Judge Duffy's Order by an opinion dated November 17, 2000. Plaintiff petitioned the Court for a rehearing *en banc*, which was denied and Plaintiff filed a petition for *certiorari* with the United States Supreme Court, which was also denied.

In his order granting summary judgment on Plaintiff's federal claims, Judge Duffy dismissed Plaintiff's supplemental state law claims without prejudice. Plaintiff filed her state law claims in state court against the East Cooper Hospital and three individuals including two members of the medical staff, and sometime later retained another law firm to assist her in pressing those claims. On September 13, 2001, the Hon. Daniel F. Pieper granted summary judgment to the Defendants in the state case on Plaintiff's state law antitrust claim but denied the Defendants' motion for summary judgment on several of the Plaintiff's remaining state law claims. After prevailing at the summary judgment stage with respect to almost all her claims, Plaintiff entered into a settlement agreement with the Defendants whereby the Plaintiff was paid

#3 T.L.K.

2 The time and charges incurred in connection with Plaintiff's federal lawsuit were billed to account number 9976.2.

the sum of $250,000 and given the opportunity to again apply for admitting privileges. Pursuant to the parties' settlement agreement, the court entered an order dismissing all of the Plaintiff's state law claims with prejudice.

1) The claims alleged against Defendants Becker and Grier were barred by the statute of limitations.

Plaintiff filed her Complaint against Sinkler & Boyd, P.A., James Becker, and Manton Grier on April 1, 2002. At that time, a civil action was commenced upon filing and service of the summons and complaint. Rule 3(a), SCRCP.[3] Pursuant to the former Rule 3(b):

> For the purposes of tolling any statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court and delivered for service to the sheriff of the county in which defendant usually or last resided, or if a corporation be defendant, to the sheriff of the county in which any person designated by statute to accept service usually or last resided; provided that actual service must be accomplished within a reasonable time thereafter.

Rule 3(b), SCRCP. It is undisputed that both Defendant Becker and Defendant Grier are residents of Richland County.

As set forth herein, Dr. Holmes's allegations are that the Defendants were negligent in the handling of her case against Tenet and East Cooper Hospital, in dealing with discovery, in failing to prevail on her claim seeking a permanent injunction, and in losing the case at summary judgment, prior to April 17, 2000. In fact, as early as January 31, 2000, Dr. Holmes was openly critical of the performance of her attorneys. In Dr. Holmes' "*Pro Se* Motion to Reconsider

[3] In 2002, the South Carolina legislature amended S.C. Code Ann. §15-3-20 by S.C. Act No. 281. The new statute provided that a civil action would commence as of the date of filing if actual service were accomplished within 120 days after filing. The effective date of Act No. 281 was May 24, 2002, and the Act applied only to causes of action filed on or after the Act's effective date. Because Dr. Holmes had already filed her action when the Act became effective, its provisions do not apply to her Summons and Complaint. Even if the Act did apply to this case, service was accomplished much later than 120 days after filing.

Dissolution of the Temporary Injunction, Motion to Allow Additional Time to Obtain Substitute Counsel," which she filed in her federal court action, Dr. Holmes stated:

> The Practitioner's Attorney, however, has not been timely: first, taking months to schedule the Motion for Temporary Injunction; second, not responding in a timely manner to your Honor's Scheduling order; third, not providing adequate representation and preparation of the case; and fourth, not notifying opposing counsel until the eleventh hour on January 4, 2000 of the request to reschedule the deposition which was made by letter dated December 17, 1999.

Thus, as of January 31, 2000, Dr. Holmes, who is herself a licensed attorney, clearly believed she had potential claims against the Defendants.

The issue of when Dr. Holmes forwarded the Summons and Complaint to the Richland County Sheriff's Department was the subject of Requests to Admit served by the Defendants on Dr. Holmes. Dr. Holmes' responses were deemed to be insufficient and therefore admitted for all purposes pursuant the Order of Hon. R. Markley Dennis, Jr., dated January 9, 2009. Therefore, it has been conclusively admitted that Dr. Holmes did not deliver the Summons and Complaint to the Richland County Sheriff until after April 30, 2003—more than three years after Dr. Holmes first represented that she believed her lawyers had not represented her adequately. Dr. Holmes presented *no* testimony or other evidence at trial regarding her delivering the Summons and Complaint to the Richland County Sheriff's Department before the statute of limitations on her claims against Mr. Becker and Mr. Grier expired. Judge Dennis made clear during the hearing on Defendants' Motion for Reconsideration of his denial of their Motion for Summary Judgment based upon the statute of limitations, that he was reserving this issue for determination by the trial judge.

The statute of limitations on Dr. Holmes' claims began to run when she knew or should have known, by the exercise of reasonable diligence, that a cause of action exists for the

wrongful conduct. *See Dean v. Ruscon Corp.*, 468 S.E.2d 645 (S.C. 1996); *and Berry v. McLeod*, 492 S.E.2d 794 (S.C. Ct.App.1997). "The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *Epstein v. Brown* 610 S.E.2d 816, 818 (S.C. 2005). Therefore, Dr. Holmes failed to commence this action against Mr. Becker and Mr. Grier within three years of when she knew or should have known that a cause of action existed against Mr. Becker and Mr. Grier. On that basis, Mr. Becker and Mr. Grier are entitled to judgment as a matter of law on all claims brought by Dr. Holmes against them.

2) **The only reasonable inference to be drawn from the evidence is that all Defendants are entitled to judgment as a matter of law with respect to all claims brought by Plaintiff.**

Separate and apart from the statute of limitations the only reasonable inference from the evidence is that all Defendants are entitled to judgment as a matter of law on all counts.

(a) **Dr. Holmes failed to present any expert testimony of any sort to establish either the required elements of her malpractice claim or to establish the elements of her case-within-a-case.**

All of the Plaintiff's claims against Defendants arise out of the same operative facts and are properly analyzed as claims of professional negligence or malpractice. "[W]hen ... the same operative facts support actions for legal malpractice and breach of fiduciary [and other duties] resulting in the same injury to the client, the actions are identical and the later should be dismissed as duplicative." *Doe v. Howe*, 367 S.C. 421, 448 n.27 (Ct. App. 2009), *quoting Majumdar v. Lurie*, 274 Ill. App. 3d 267, 653 N.E. 2d 915, 921 (1995). Here Plaintiff's multiple causes of action for breach of contract, breach of contract accompanied by fraudulent act, breach of fiduciary duty, unfair trade practices, conversion, quantum merit, fraud, and whatnot, are "'mere disguises for the plaintiffs' legal malpractice claims' because the breach alleged in [all]

[is] 'the same failure to provide adequate legal services that [is] the crux of the legal malpractice claims.'" *Id.*, *quoting General Sec. Ins. Co. v. Jordan Coyne & Savits, LLP*, 357 F. Supp. 951, 961-62 (E.D. Va. 2005).

The general rule in legal malpractice cases is that expert testimony is required to prove the Plaintiffs' case. *Cianbro Corp. v. Jeffcoat & Martin*, 804 F. Supp. 784, 790-91 (D.S.C. 1992); *Hall v. Fedor*, 561 S.E.2d 654 (Ct. App. 2002); *Mali v. Odom*, 367 S.E.2d 166, 168 (Ct. App. 1988). Plaintiff failed to submit any admissible expert testimony to establish (a) the applicable standard of care; (b) that Defendants breached the standard of care; or (c) that she suffered damages that proximately resulted from such breach. Plaintiff, therefore, failed to establish *any* of the essential elements of her claim and, on that basis, Defendants are entitled to judgment as a matter of law.

Moreover, the Defendants offered the opinion testimony of John Freeman, Esq., a retired law professor, who was found to be qualified as an expert by this Court. Professor Freeman testified that in his opinion the Defendants committed no malpractice. Furthermore, Professor Freeman made clear that nothing the Defendants did, or failed to do, would have made any difference in the ultimate outcome of Plaintiff's federal antitrust case because Judge Duffy extended existing precedent to bar antitrust claims over a hospital's credentialing decisions. That decision is, and remains, the state of the law in the Fourth Circuit.

Plaintiff also failed to present evidence to establish the underlying case within her case, which is required to establish proximate cause in a legal malpractice case of the type alleged. *See e.g.*, *Doe v. Howe, supra.* As has been noted, Plaintiff's burden is not to establish what would have been, but what should have been. *Doe v. Howe.* 626 S.E.2d at 31, n. 18, *citing* Wilburn Brewer, Jr., *Expert Testimony in Legal Malpractice Cases*, 45 S.C. L.Rev. 727, 766

#7 T.L.B.

(1994). Plaintiff failed to present the highly technical economic evidence necessary to establish a claim under Sections 1 and 2 of the Sherman Act. *See Order of Judge Duffy* at 18, n. 2 (Apr. 17, 2000). Thus, as a matter of law Plaintiff failed to carry her burden of proof. Because Judge Duffy held that East Cooper Hospital's credentialing process and requirements were not *per se* illegal under the Sherman Act, Dr. Holmes was required to prove in this case that the credentialing requirements unreasonably restrained trade under a so-called rule-of-reason analysis.

To prove an unlawful restraint in a rule-of-reason case, Dr. Holmes would have had to have established a relevant product and geographic market by expert testimony and to demonstrate that the defendant hospital had acquired market power in the relevant market as a result of the challenged by-law by showing (again by expert testimony) the hospital's market share in the relevant market both before and after the adoption of the challenged by-law. *E.g., Military Services Realty, Inc. v. Realty Consultants of Virginia, LTD*, 823 F.2d 829 (1987). *Duffy Order* 18 & n.2. The Defendant attorneys were unable to adduce any such proof back in 2000 and in the nine years since Judge Duffy granted summary judgment and in the seven years since Dr. Holmes filed this suit, Dr. Holmes has not come up with evidence to establish an unreasonable restraint of trade. She has adduced no additional relevant *or* admissible evidence that was not presented to Judge Duffy in 2000.

Dr. Holmes acknowledges that she has the burden of establishing the case within the case. She has the burden of establishing the antitrust case that she contends the Defendant attorneys should have established back in 2000 and that she would have been successful in the prosecution of that case but for the negligence of the Defendants. Yet she called no expert that would be needed to define the relevant market and assess the hospital's market power within that

market. Accordingly, after the Plaintiff had the opportunity to have conducted discovery over seven years, Defendants are entitled to judgment as a matter of law for the same reasons stated by Judge Duffy in his order.

Dr. Holmes' Section 2 claim fails for the same reason. To establish a Section 2 claim (monopolization, attempt to monopolize, or conspiracy to monopolize) the plaintiff is required to establish the relevant market and the Defendant's market share by expert testimony. *Duffy Order*, 18-19. *See Military Services Realty, Inc.*, 823 F.2d 829. Dr. Holmes presented no evidence whatsoever to support that claim.

3) All of Plaintiff's claims fail as a matter of law for other reasons as well.

All of Plaintiff's claims are conveniently analyzed herein under two general subject areas: (1) the Plaintiff's engagement of her former attorneys and (2) the handling of her federal lawsuit by her former attorneys.

a) **The Engagement of Counsel.**

(i) The terms of Defendants' engagement were set forth in unambiguous writings signed by Plaintiff that entitle Defendants to judgment as a matter of law.

Plaintiff claims that Defendants agreed to represent her in the federal court on a contingent fee basis, breached that agreement by refusing to do so, failed to reduce the contingent fee agreement to writing, refused to return unearned fees after the federal court granted summary judgment dismissing Plaintiff's federal claims, and abandoned Plaintiff by not appealing the dismissal of her federal claims. Defendants are entitled to judgment as a matter of law on all of these claims based on an unambiguous engagement agreements signed by the Plaintiff.

#9 T.L.B.

"The cardinal rule of contract interpretation is to ascertain and give effect to the intention

of the parties. . . ." *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n of S.C.*, 317 S.C. 452, 457, 454 S.E.2d 901, 905 (Ct. App. 1995). "Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it." *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). If the contract is ambiguous, that is capable of two or more reasonable interpretations, then the court may consider extrinsic evidence "to determine the intent of the contracting parties." *Id.* The Court finds the agreements to be unambiguous in their terms.

Plaintiff's obdurate insistence that the Defendants agreed to represent her in the federal court in exchange for a contingent fee is wholly unsupported. The engagement agreements signed by Plaintiff and Mr. Becker make clear the terms of Plaintiff's retention of the law firm—including unquestioned requirements that she pay fees calculated on an hourly rate. These agreements also make clear that the law firm would require that any additional amendment to the terms of the engagement be in writing and signed by both Dr. Holmes and the firm. Additionally, "'the parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument.' *Gilliland v. Elmwood Properties,* 391 S.E.2d 577, 581 (S.C. 1990). 'Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties.'" *In re Estate of Holden*, 539 S.E.2d 703, 708 (S.C. 2000) *citing Penton v. J.F. Cleckley & Co.*, 486 S.E.2d 742 (S.C. 1997). "The parol evidence rule is a rule of substantive law, not a rule of evidence. Accordingly, evidence violating the parol evidence rule is legally incompetent and should not be considered even if no objection is made at trial." *Id.*

#10 T.C.B.

Thus, the terms of the contract between the parties are clear and unambiguous and, based upon the agreement, there can be no reasonable inference but that Defendants are entitled to judgment as a matter of law.

Defendants' engagement letters with Plaintiff expressly provided for the fees that Plaintiff would pay up through the summary judgment stage and prior to the start of trial in the federal court. On January 25, 2000, Dr. Holmes signed an addendum in which she agreed to pay $15,000 of the $19,471 she owed on file No. 9976.2 (her federal case), the balance to be added to file No. 9976.1 (her hospital appeal) and to pay $25,000 on account in file No. 9976.2 (her federal case) to cover fees through the completion of discovery and arguing the motion for summary judgment not to exceed $25,000, and to pay $10,000 at least two weeks prior to the start of the trial term. Plaintiff never paid the money in advance of trial, though the Defendants wrote requiring such. The federal court granted summary judgment dismissing Plaintiff's federal claims. But all fees paid by Plaintiff prior to the district court's granting summary judgment were fully earned under the parties' agreement. In short, Plaintiff owed Defendants money for their fees and she paid some, but not all, of the money as required under the parties' unambiguous agreement.

Furthermore the engagement letter Plaintiff signed on January 25, 2000, expressly provides as follows in pertinent part:

> We will not appeal any aspect of this case unless we believe, in our sole discretion, that the appeal has merit. The business terms of our legal representation of you for any appeal must be agreed to in writing and signed by you before we commence any appeal. You are always free to select other counsel to continue this representation or to appeal.

Accordingly, Defendant attorneys breached no duties owed to Dr. Holmes when they declined to appeal Judge Duffy's order to the Fourth Circuit. Moreover, Dr. Holmes, who is a

licensed attorney, pursued her own appeal, petitioned for a rehearing en banc when her appeal was denied and petitioned the United States Supreme Court for a writ of *certiorari* to review the Fourth Circuit's decision affirming Judge Duffy and denying her petition for rehearing. The Defendants' engagement also did not extend to representing Dr. Holmes in the state court. Dr. Holmes retained other counsel to represent her in the state court and agreed to a settlement of all her state law claims, which have been dismissed with prejudice.

The only reasonable inference to be drawn from the admissible evidence presented at trial is that Defendants complied with the terms of their engagement and that, on such basis, they are entitled to judgment as a matter of law.

b) **The Federal Court litigation.**

(i) Judge Duffy dismissed Plaintiff's federal antitrust claim on the basis of matters of law that the Defendant attorneys could not have overcome by additional discovery or naming additional parties and Plaintiff never had a legal right to a preliminary injunction and suffered no legally cognizable injury when it was dissolved.

Plaintiff asserts that the Defendant lawyers were negligent in handling her federal antitrust claim by failing to name necessary parties, failing to conduct adequate discovery, failing to promptly move for a temporary injunction, failing to promptly respond to the other side's discovery requests, failing to appeal the dissolution of the temporary injunction, and failing to advise Plaintiff that she had a right to appeal the dissolution of the temporary injunction. All of these claims fail as a matter of law based on the district court's judgment dismissing Plaintiff's federal claims. Plaintiff presented no expert testimony to establish how anything she alleges Defendants did incorrectly would have made any difference in the ultimate result of her federal claims.

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(ii) Dr. Holmes' federal antitrust claims failed as a matter of law when Judge Duffy expanded the intra-enterprise doctrine to include the adoption of

the challenged by-law by the hospital and the medical staff and failed in the alternative when Judge Duffy decided that the by-law was not *per se* illegal but rather was to be judged reasonable under a rule of reason standard.

The interpretation of the federal court's judgment is a matter for the court.[4] Judge Duffy dismissed Plaintiff's antitrust claims on the following alternative bases: (1) he extended the intra-enterprise or *Copperweld* doctrine to include matters of credentialing not theretofore considered to be part of the peer review process; (2) he held that the hospital's by-law was not *per se* illegal and was lawful under a rule of reason standard; (3) he held that Plaintiff had not established an antitrust injury; and (4) he held that the Plaintiff had not properly defined the relevant market or demonstrated that the hospital possessed market power in a properly defined relevant market. Judge Duffy's order also constitutes an authoritative survey of federal antitrust law applicable to the claims Dr. Holmes asserted under the Sherman Act. Accordingly, the court cites Judge Duffy's order herein as the controlling law applicable to Plaintiff's antitrust claims.

Equally clear is what Judge Duffy did not decide. He did not dismiss Plaintiff's antitrust claim because she had failed to name a necessary party or because her attorneys had been dilatory in filing the motion for a temporary injunction or responding to the hospital's discovery requests. Rather, Judge Duffy dismissed Plaintiff's antitrust claims on the basis of matters of law that could not have been overcome by additional discovery or naming additional parties.

Section 1 of the Sherman Act prohibits contracts, combinations or conspiracies that unreasonably retrain trade. 15 U.S.C. § 1. To establish that business conduct or structure

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[4] *See, e.g., Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996) (construction of written instrument ordinarily for the court) (patent claims). *See generally*, IV *Wigmore on Evidence* § 2348 at 3274:

> "[W]here the existence and tenor of a legal act—*i.e.*, an utterance to which legal effects are attached—are in issue, the outward utterance as finally and formally made, and not the prior and private intention, is taken as exclusively constituting the act ...; and therefore where the act is required (as judicial proceedings are) to be made in writing, the writing is the act. ..." .

unreasonably restrains trade, a Plaintiff is ordinarily required to prove a so-called rule of reason case – *i.e.*, to establish by expert testimony a relevant geographic and product market and demonstrate that, as a result of the challenged restraint, the defendant has acquired market power in the relevant market. *See Duffy Order* 14-15 & 18, n.2. Plaintiff is also required to establish an antitrust injury by showing that the challenged restraint has reduced output or increased prices beyond competitive levels in the relevant market. *Id.* 14 & 18. Certain conduct, however, is considered *per se* illegal because it almost always restrains competition without any justification (*e.g.*, price fixing agreements among horizontal competitors). *Id.* 14-15. With conduct that is *per se* illegal, the plaintiff need only establish that the conduct occurred. No in-depth analysis of the purpose of the restraint or its impact on competition within the market is required. *Id.* 15. Thus, the plaintiff in a *per se* case does not ordinarily have to establish the relevant market or the Defendant's share of the relevant market. *Id.* 15. Even with a *per se* case, however, the plaintiff must still establish an antitrust injury. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 341-42 (1990).

Dr. Holmes' Section 1 claim failed as a matter of law, however, when Judge Duffy extended the intra-enterprise or *Copperweld* doctrine to include the adoption of the by-law and rejected the assertion that the by-law was *per se* illegal. *Duffy Order* 11. In *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), the United States Supreme Court held that a corporation and its wholly-owned subsidiary are considered to be one economic unit under Section 1. Thus, an agreement, combination or conspiracy between the corporation and its wholly-owned subsidiary could not supply the necessary concerted action needed to establish a Section 1 violation. Subsequent lower court decisions extended the doctrine to include subsidiaries that are less than wholly owned and in *Oksanen v. Page Memorial Hosp.*, 945 F.2d

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696 (4th Cir. 1991), the Fourth Circuit extended the doctrine to apply to a hospital and members of its medical staff when revoking a physician's privileges as part of the peer review process for professional misconduct (*e.g.*, incompetence, substance abuse, or other unprofessional conduct).

In his order, Judge Duffy expanded the doctrine further by concluding that adoption of the challenged by-law was part of the peer review process. *Duffy Order* 2, 11. At that point, Dr. Holmes' Section 1 claim failed as a matter of law and it could not have been saved by naming as co-defendants individual members of the medical staff (including Dr. Grady, whom Dr. Holmes characterizes as the culpable competitor).

Judge Duffy's order was affirmed by the Fourth Circuit and Dr. Holmes petitioned the Supreme Court to review and reverse what she characterized as "an unwarranted and dangerous extension of the intra-enterprise doctrine to credentialing cases not involving peer review."[5]

The Defendant attorneys advised Dr. Holmes that, in their professional judgment, she could not prevail under a rule of reason standard. Dr. Holmes' only chance was to persuade Judge Duffy that the hospital's credentialing requirements—either have 24 patient contacts for Active Staff privileges, or maintain active staff privileges at another hospital for Courtesy Staff privileges—were *per se* illegal. Dr. Holmes presented no evidence to establish that the result of her federal case *should* have been different. Thus, the only reasonable inference to be drawn is that Defendants are entitled to judgment as a matter of law.

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(iii)Dr. Holmes' federal law claims failed as a matter of law and she suffered

[5] Petition for *Certiorari* at 21-21. In her petition, Dr. Holmes presents the following as the first question on which she seeks review.

> Whether the 'intra-enterprise' doctrine should be applied to immunize the hospital and its medical staff from antitrust liability when the hospital and its medical staff are not performing "peer review" and terminate a physician's admitting privileges for reasons not involving questions of professional competence or quality of patient care.

no legally cognizable injury when Judge Duffy dissolved the temporary injunction.

Judge Duffy granted a temporary injunction enjoining the hospital from reclassifying Dr. Holmes' privileges based on her sworn affidavit alleging that she had patients who needed to have operations. After Judge Duffy learned that Dr. Holmes had not scheduled any patients for operations, he dissolved the temporary injunction.

But regardless of the reasons why Judge Duffy dissolved the temporary injunction, Dr. Holmes suffered no legally cognizable injury when the injunction was dissolved because she was never legally entitled to an injunction in the first instance. All of Dr. Holmes' federal claims were eventually dismissed by Judge Duffy and his order was affirmed by the Fourth Circuit.

For the same reason, Dr. Holmes suffered no legally cognizable injury when the Defendant attorneys did not appeal the dissolution of the temporary injunction or advise Dr. Holmes that she had a right to appeal without waiting for final judgment. Dr. Holmes has the burden of showing that any such appeal most probably would have been successful. *Floyd v. Kosko*, 285 S.C. 390, 393, 329 S.E.2d 459 (1985). Whether any such appeal would have succeeded is a matter of law for the court. *Floyd*, 285 S.C. 391. Dr. Holmes offered no evidence to support a reasonable inference that an appeal would have succeeded. Any such appeal would have been lost for the same reasons Dr. Holmes lost her appeal after Judge Duffy granted summary judgment and the court entered final judgment.

In short, Plaintiff failed to establish how anything she alleges should have been done should have changed the result of her federal case. Rather, Plaintiff focuses totally on minor incidents that, in the grand scheme of things, made no difference whatsoever. In the end, Judge Duffy simply dismissed the claims that formed the basis of Plaintiff's assertion of federal jurisdiction and, absent federal subject matter jurisdiction, Plaintiff had to, and in fact did, press

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her claims in state court.

4) Plaintiff's individual causes of action likewise fail as a matter of law.

Plaintiff alleged fifteen separate causes of action. While the Court notes that all Plaintiff's claims hinge on the same nucleus of operative facts as her claim for legal malpractice, the Court finds that even were these claims not properly subsumed into the legal malpractice claim, the only reasonable inference as to each is that Defendants are entitled to judgment as a matter of law.

a) **Professional Negligence**

As is discussed above, Plaintiff failed to introduce any expert testimony to establish the essential elements of her claim that Defendants committed malpractice. The Court finds that, given the complex nature of the underlying case and the matters alleged, this case does not fall within the common knowledge exception and, as such, Plaintiff was required to establish her case through expert testimony. In failing to do so, Plaintiff likewise failed to establish any of the essential elements of her claims and therefore the only reasonable inference is that Defendants are entitled to judgment as a matter of law.

The Court notes further that, even in the complete absence of testimony to establish Plaintiff's professional negligence claims, Defendants have presented expert testimony that they were not negligent in handling Plaintiff's case. Professor Freeman testified that the Defendants complied with the applicable standard of care. Likewise Mr. Becker testified that he and his firm did their very best to represent Dr. Holmes and that they were diligent in carrying out that representation. Thus, the only reasonable inference from the evidence is that Defendants are entitled to judgment as a matter of law.

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b) **Breach of Contract**

Likewise as discussed above, the only reasonable inference to be drawn from the evidence is that the terms of the parties' engagement agreement were clearly and unambiguously stated in the documents signed by Dr. Holmes and Mr. Becker. Pursuant to those agreements, Defendants agreed to bill Dr. Holmes for time spent on her matters and she agreed to pay them by the hour. Additionally, the unambiguous terms of the parties' agreement addendum in January, 2000, set forth exactly how much Plaintiff was to pay, and for what, and that under no circumstances were Defendants obliged to appeal any issue that they, in their sole discretion, thought lacked merit. Plaintiff's testimony regarding both the alleged contingency fee agreement and her testimony regarding the payment of fees in advance for trial is directly contradictory to the clear terms of the parties' signed agreements. As before, the parol evidence rule bars all such testimony. Thus, the only reasonable inference from the facts is that Defendants are entitled to judgment as a matter of law.

c) **Breach of Contract Accompanied by a Fraudulent Act**

For the reasons stated above, Plaintiff's claim for Breach of Contract Accompanied by a Fraudulent Act must likewise fail. Additionally, Plaintiff has failed to put forward any evidence whatsoever to establish that the Defendants acted with fraudulent intent relating to the breach or that there was a fraudulent act accompanying the breach. *See Harper v. Ethridge*, 348 S.E.2d 374 (Ct. App. 1986). There is but one reasonable inference from the evidence, Defendants are entitled to judgment as a matter of law as to Plaintiff's claim for Breach of Contract Accompanied by a Fraudulent Act.

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d) **Breach of Fiduciary Duty**

As is discussed above with respect to Plaintiff's claims regarding professional negligence, Plaintiff presented no expert testimony regarding the applicable standard of care.

e) **Unfair Trade Practices**

As before, there is no evidence to establish the essential elements of a claim for violation of the South Carolina Unfair Trade Practices Act.[6] Plaintiff has elicited no testimony and has presented no evidence to support her allegation that Defendants engaged in any unlawful or deceptive trade practice. Plaintiff further has not presented any evidence of any adverse impact on the public interest. Furthermore, Plaintiff has presented no evidence of any sort that any allegedly deceptive act by the Defendants is capable of repetition. She has not established that the same kind of actions occurred in the past, nor that it is likely they will continue to occur absent deterrence, nor has she established that the Defendants' procedures create a potential for repetition of any allegedly unfair or deceptive acts. *See e.g. Daisy Outdoor Advertising Co. v. Abbot*, 473 S.E.2d 47 (S.C. 1996) *and Wright v. Craft*, 640 S.E.2d 486 (Ct. App. 2006). Finally, it is well-settled that SCUTPA was not intended to apply to mere acts of negligence. *Clarkson v. Orkin Exterminating Co.*, 761 F.2d 189 (4th Cir. 1985)(There is no support in South Carolina law for the proposition that a service person violates the unfair trade practice statute if he performs his job poorly or overlooks something which should have attracted his attention). Likewise, a mere breach of contract will not support a claim under the SCUTPA. *South Carolina Nat'l Bank v. Silks*, 367 S.E.2d 421 (Ct. App. 1988). As such, the only reasonable inference from the evidence is that Defendants are entitled to judgment as a matter of law.

f) **Abandonment**

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The written and signed engagement agreements between Plaintiff and Defendants make clear that Defendants were under no obligation whatsoever to pursue an appeal of the dismissal

[6] The Court notes that it would appear that the SCUTPA was not intended to apply to the professional conduct of attorneys inasmuch as the South Carolina Supreme Court is vested with the authority to regulate the practice of law. S.C. Const. Art. V, Section 4; *see also In re: Unauthorized Practice of Law*, 422 S.E.2d 123 (S.C. 1992)(the Constitution commits to the Supreme Court the duty to regulate the practice of law in South Carolina).

of Plaintiff's federal claims and that they were under no obligation to handle her subsequent state case. The only reasonable inference from the evidence is that Defendants are entitled to judgment as a matter of law on Plaintiff's claim for abandonment.

g) **Civil Conspiracy**

To establish a claim for civil conspiracy, Plaintiff is required to establish (1) a combination of two or more persons; (2) for the purpose of injuring her; (3) which causes special damages. *LaMotte v. Punchline of Columbia, Inc.*, 478 S.E.2d 45 (S.C. 1996). Plaintiff has presented no evidence to establish *any* of the essential elements of this claim. Furthermore, the Court notes that which Plaintiff should be well aware, a corporate entity and its employees are legally incapable of engaging in a conspiracy. *See, e.g. McMillan v. Oconee Memorial Hosp., Inc.*, 626 S.E.2d 884 (S.C. 2006); *Lee v. Chesterfield Gen. Hosp., Inc.*, 344 S.E.2d 379, 383 (Ct. App. 1986). Furthermore, Plaintiff has adduced no evidence whatsoever from which anyone could reasonably infer the joint assent to the prosecution of the unlawful enterprise. *Island Car Wash, Inc. v. Norris*, 358 S. E. 2d 150 (Ct. App. 1987). In the absence of any evidence of an actionable civil conspiracy or of any special damages, the only reasonable inference is that Defendants are entitled to judgment as a matter of law.

h) **Promissory Estoppel**

Promissory estoppel is a substitute for, or an equivalent of, consideration. Where a contract exists, promissory estoppel is inapplicable. *White v. Roche Biomedical Laboratories, Inc.*, 897 F.Supp. 1212 (D.S.C. 1992) *aff'd* 998 F.2d 1011 (4th Cir. 1993). Promissory estoppel applies where a refusal to enforce a promise would result in other injustice. *Higgins Constr. Inc. v. Southern Bell Telephone & Telegraph Co.*, 281 S.E.2d 469 (S.C. 1981). To establish promissory estoppel, Plaintiff must prove: (1) a promise that is unambiguous in its terms; (2)

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reasonable reliance on the promise by the party to whom it is made; (3) the reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. *Powers Constr. Co., Inc. v. Salem Carpets, Inc.*, 322 S.E.2d 30 (Ct. App. 1984).

Plaintiff's promissory estoppel claim fails as a matter of law. She and the Defendants entered into clear and unambiguous written agreements, which were not altered by subsequent written and executed instruments. This fact alone undermines Plaintiff's claim.

Furthermore, even absent the parties' written agreements, Plaintiff has failed to present any evidence to support the essential elements of a claim for promissory estoppel. There is no evidence of any unambiguous promise by the Defendants to the Plaintiff. There is no evidence that Plaintiff reasonably relied on such promise.

i) **Defamation**

As a threshold matter, there is no evidence of any statement by the Defendants that would qualify as defamation *per se*. As such, the Court need only analyze whether Plaintiff has satisfied her burden of proof for a defamation *per quod*. To establish a claim for defamation, Plaintiff was required to prove (1) a statement with a defamatory meaning; (2) publication with actual or implied malice; (3) falsity; (4) publication by the Defendants; (5) the message concerns the Plaintiff; and (6) legally presumed damages or special damages to the Plaintiff. *See Parker v. Evening Post Publishing Co.*, 452 S.E.2d 640 (Ct. App. 1994). There is no evidence regarding *any* of the essential elements required to prove a case for defamation.

j) **Constructive Fraud**

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Constructive fraud is distinguished from fraud by the absence of the element of intent to deceive. *Singleton v. Mullins Lumber Co.*, 108 S.E.2d 414 (S.C. 1959); *Designer Showrooms, Inc. v. Kelley*, 405 S.E.2d 417 (Ct. App. 1991). The only reasonable inference from the evidence

presented at trial is that Defendants are entitled to judgment as a matter of law as to this claim. There was no evidence of any false representation by the Defendants upon which Dr. Holmes relied. Rather, the only evidence in the case was that Defendants represented Plaintiff and that Judge Duffy ruled against Dr. Holmes as a matter of law. There was no evidence that Defendants engaged in any fraudulent conduct and, on that basis, Defendants are entitled to judgment as a matter of law.

k) **Conversion**

Plaintiff's claim for conversion was based on her contradictory allegations that either Defendants agreed to proceed on a contingency fee basis or that Defendants agreed that Plaintiff should pay them a retainer to cover attorney's fees for trial of her federal case. Both assertions are directly contradictory to the parties' written agreements, which Plaintiff signed on several occasions, in which she specifically agreed to the terms of Defendants' engagement and the basis for their fees. As such, the only reasonable inference to be drawn from the evidence is that Defendants are entitled to judgment as a matter of law on Plaintiff's claim for conversion.

l) **Negligent Misrepresentation**

A claim for negligent misrepresentation must be premised on a negligently made false statement upon which the Plaintiff relied that caused her to enter into a contract or business arrangement in which she suffered a loss. *Gruber v. Santee Frozen Foods, Inc.*, 419 S.E.2d 795 (S.C. 1992). A plaintiff in a negligent misrepresentation action must establish the following: (1) the Defendants made a false representation to her, (2) the Defendants had a pecuniary interest in making the statement, (3) the Defendants owed a duty of care to see that they communicated truthful information to Plaintiff, (4) the Defendants breached that duty by failing to exercise due care, (5) the Plaintiff justifiably relied on the representation, and (6) the Plaintiff suffered a

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pecuniary loss as the proximate result of his reliance on the representation. *McLaughlin v. Williams*, 665 S.E.2d 667, 670 (Ct. App. 2008); *Turner v. Milliman* 671 S.E.2d 636, 642 (Ct. App. 2009).

First, Plaintiff presented no evidence to establish either the standard of care or that Defendants breached that standard of care. Dr. Holmes further presented no evidence that Defendants negligently misrepresented anything. As before, the terms of the written and executed engagement agreements were clear and unambiguous and there is no evidence that Defendants misrepresented anything about Plaintiff's federal court case. On that basis, the only reasonable inference is that Defendants are entitled to judgment as a matter of law.

m) **Negligent Supervision**

Plaintiff presented no evidence to establish her allegation that anyone affiliated with the Defendant law firm was negligent in supervising any other person. Quite the contrary, the only evidence presented was that there was no negligent supervision. On that basis, the only reasonable inference is that Defendants are entitled to judgment as a matter of law with respect to Plaintiff's claim of negligent supervision.

n) **Fraud and Misrepresentation**

For the reasons already set forth in the sections above dealing with Constructive Fraud and for Negligent Misrepresentation, the only reasonable inference that can be drawn from the evidence is that Defendants are entitled to judgment as a matter of law as to Plaintiff's claim for fraud and misrepresentation.

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o) **Quantum Meruit**

Quantum meruit is a equitable doctrine permitting recovery for unjust enrichment. *Columbia Wholesale Co. v. Scudder May N.V.*, 440 S.E.2d 129 (S.C. 1994). The term has come

to mean a cause of action. The essential elements to establish a claim based upon *quantum meruit* are: (1) that Plaintiff furnished valuable services or materials; (2) for the Defendant; (3) the Defendants accepted the services or materials; and (4) Plaintiff was expecting to be paid for those materials or services. *Id. see also Columbia Wholesale Co., Inc. v. Scudder May N.V.* 440 S.E.2d 129 (S.C. 1994) (citing *Columbia Wholesale*, but identifying 3 elements). None of the essential elements for a claim based on *quantum meruit* exists. Plaintiff offered no evidence that *she* provided any service to the Defendants for which she expected to be paid, and that the Defendants accepted. Quite simply, Plaintiff misapprehends the nature of a claim based on *quantum meruit*. As such, the only reasonable inference from the evidence is that Defendants are entitled to judgment as a matter of law.

5) Damages

It is axiomatic that Plaintiff bears the burden of proving that she has been damaged and that such damage proximately resulted from the acts or omissions of the Defendants. In attempting to prove her damages, Plaintiff sought to introduce a list of cataract surgeries she has referred to other physicians since 2000. Plaintiff's theory of causation for these damages is as follows: first, because Defendants were dilatory in responding to discovery, the federal court scheduled a status conference in January 2000, and second, but for the status conference, the Court would not have been presented with the opportunity to dissolve the preliminary injunction. Under Plaintiff's theory, had the court not dissolved the preliminary injunction at the status conference, it would have remained in place through the granting of summary judgment on Plaintiff's federal claims, at which time the federal court may have retained jurisdiction over Plaintiff's state law supplemental claims and continued the preliminary injunction through a trial in the federal court of Plaintiff's state law supplemental claims, at the conclusion of which the

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court would have granted a permanent injunction. Thus Plaintiff contends that Defendants are responsible for all profits she has lost on all cataract surgeries she has referred to other physicians since 2000 through today's date.

"Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation." *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 570-71, 183 S.E.2d 438, 444 (1971); *see also Yadkin Brick Co. v. Materials Recovery Co.*, 339 S.C. 640, 529 S.E.2d 764 (Ct. App. 2000); *Minter v. GOCT, Inc.*, 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996).. Plaintiff's supposed chain of causation is too attenuated to raise a reasonable inference that the conduct of Defendants about which the Plaintiff complains was the proximate cause of the damages Plaintiff claims to have suffered. Plaintiff also ignores her failure to provide the Defendants with the information needed to respond to discovery requests, her failure to schedule surgeries after Judge Duffy granted the preliminary injunction and her cancellation of her deposition on short notice, all of which led the hospital to file a motion to dissolve the temporary injunction. Plaintiff also ignores her insistence that the Defendants had agreed to represent her on a contingent fee basis (contrary to the written engagement letter signed by Plaintiff) that led to the fee dispute that prompted the Defendants to file a motion to withdraw. In any event, for reasons already stated, Plaintiff was never legally entitled to a preliminary injunction in the first instance.

Also it was incumbent on Plaintiff to prove with reasonable certainty her net losses, which she failed to do. The Plaintiff in a legal malpractice case cannot prove damages by speculative evidence of lost gross revenue "without reference to any particular standard or fixed method for estimating future income and expenses for a business of [plaintiff's] kind." *Mali v. Odom*, 295 S.C. at 84, 367 S.E.2d at 170. Plaintiff failed to present any evidence of her alleged damages. Neither did Plaintiff present any evidence whatsoever that her alleged

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damages proximately resulted from Defendants' alleged acts or omissions.

Additionally, Plaintiff has alleged that she is entitled to punitive damages. She has presented no evidence to establish by clear and convincing evidence that she is entitled to such an award.

CONCLUSION

For the reasons stated above, the court grants the Defendants' motion for a directed verdict..

AND IT IS SO ORDERED!

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July 14, 2009

T. L. Hughston, Jr.

Thomas L. Hughston, Jr.
Judge, Court of Common Pleas
County of Charleston

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CYNTHIA HOLMES, M.D.

Plaintiff,

vs.

HAYNSWORTH, SINKLER & BOYD, P.A., successor to SINKLER & BOYD, P.A., MANTON GRIER, and JAMES Y. BECKER,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
DOCKET NO. 07-CP-10-1444

ORDER on POST TRIAL MOTIONS

FILED
2009 NOV 18 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on several post trial motions filed by Plaintiff and on Defendants' Motion for Sanctions Pursuant to S.C. Code Ann. 15-36-10, Rule 11, SCRCP, and pursuant to the Court's inherent authority to award attorneys' fees where the losing party has acted in bad faith, vexatiously, or for oppressive reasons. Having considered the materials submitted by Plaintiff in support of her motion, and having heard oral argument from the parties, the Court finds as follows with respect to Plaintiff's post trial motions:

1. Plaintiff's Motion to Dismiss Defendants' Motion for Sanctions that she filed with the Court on July 7, 2009, is **DENIED.**

2. Plaintiff's Motion for New Trial that she filed on July 20, 2009 is **DENIED**.

3. Plaintiff's Motion for Reconsideration of the Court's Order denying her Motion for Continuance that she filed on July 21, 2009, is **DENIED**.

4. Plaintiff's Motion for Reconsideration of the Court's Order Granting Directed Verdict to Defendants that she filed on August 3, 2009 is **DENIED**.

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T.L.H.

5. Plaintiff's Motion to Strike and/or Dismiss Defendants' Motion for Sanctions that she filed on September 21, 2009 is **DENIED.**

6. To the extent Plaintiff has moved that Defendants or their counsel be sanctioned, such motion is **DENIED.**

DEFENDANTS' MOTION FOR SANCTIONS

I have also considered Defendants' Motion for Sanctions and find that, given the circumstances discussed below, sanctions are appropriate and Defendants' Motion is hereby **GRANTED.**

I need not provide another detailed recitation of the facts of this case or the evidence presented or not presented at trial. Rather, I refer to the discussion in my Order Granting Defendants' Directed Verdict. In ruling on Defendants' Motion, I specifically find that sanctions are warranted under either the former South Carolina Frivolous Civil Proceedings Act, or the Act that became effective on July 1, 2005. I also find that sanctions are appropriate under Rule 11, SCRCP, and under the Court's inherent authority. It became clear to me that Plaintiff lacked any substantial evidence to support her claims against these Defendants, her former lawyers, and that Plaintiff's initiation and continuation of this lawsuit was done with no reasonable cause, and that any reasonable attorney would have believed that the proceedings to date have been frivolous.

As became evident throughout trial, Plaintiff filed a non-meritorious and baseless lawsuit. Prior to filing suit, Plaintiff obviously conducted no serious investigation of the facts she would be required to prove to substantiate her wide-ranging claim. Rather, the entire tenor of Dr. Holmes' case appears to be her belief that she is right and her former lawyers and 4 other courts are all wrong. Plaintiff failed to develop any evidence that could satisfy her burden of proof at trial. Any reasonable attorney would conclude that Plaintiff's entire case was

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completely frivolous and was brought, and continued for seven years, without any reasonable basis.

Plaintiff engaged in dilatory litigation tactics and appealed numerous interlocutory matters, including orders regarding venue and several orders on discovery matters. These appeals were likewise frivolous and dilatory. Plaintiff also has submitted numerous affidavits and memoranda accusing Defendants and defense counsel of engaging in all manner of inappropriate and abusive conduct, each of which has been dismissed and discounted by the Court, and all of which were submitted without reasonable basis. Plaintiff has never accepted the rulings of the Court and has moved for reconsideration on each and every order denying whatever relief she sought, sometimes multiple times.

Based upon the complete dearth of any evidence whatsoever to support any essential element of any of the 15 separate causes of actions Plaintiff asserted, I granted Defendants' Motion for Directed Verdict. I had, at the very beginning of trial, denied Defendants' Motion for Summary Judgment. However, as I stated, that ruling was based on the Court's unfamiliarity with the facts of the case and was not directed to the merits of Defendants' Motion. Given our system for assigning cases for trial, I had only a few days earlier gained any knowledge of this case. It is three Clerk's files, each about four inches thick for a total of twelve inches of paper, and that does not include the depositions. There was no practical way for me to deal with competing Motions for Summary Judgment on Monday of the trial week. I simply let the case go forward. If I had known then what I knew five days later, I would have granted Defendants' Motion for Summary Judgment. Plaintiff did not sustain her burden of establishing a genuine issue of material fact for trial even after several days of testimony. This, quite simply, is because there were no genuine issues of material fact for trial. Most importantly, Plaintiff presented no

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expert testimony regarding the essential elements of her attorney malpractice claim and presented no testimony or evidence that anything done by the Defendants or not done by the Defendants was wrong. Furthermore, the record contains no evidence that Plaintiff suffered any damages as a proximate result of anything the Defendants either did or did not do. In short, Plaintiffs claims were so utterly baseless and lacking in any evidentiary support that no reasonable lawyer, judge, or jury could conceivably think her claims had any merit whatsoever.

1. Sanctions are appropriate pursuant to the current §15-36-10.

The Frivolous Civil Proceedings Sanctions Act (hereinafter "the Act"), S.C. CODE ANN. §15-36-10 allows the Court to impose sanctions for the initiation and prosecution of meritless civil actions. In 2005, the former Frivolous Civil Proceedings Act, S.C. CODE ANN. §§15-36-10 through 15-36-50 was repealed effective March 21, 2005, by Act No. 27, 2005 S.C. Acts, 121, §12. Act 27 §4 reenacted the Frivolous Civil Proceedings Act effective July 1, 2005. *See Rutland v. Holler, Dennis, Corbett, Ormond & Garner*, 637 S.E.2d 316 (S.C. 2006). The new statute is applicable to all causes of action arising on or after that date.

The tortured procedural history of this case is as follows: Plaintiff filed her original Complaint in Charleston County in 2002. Venue was transferred to Richland County on the motion of Sinkler & Boyd, and Dr. Holmes appealed the Order transferring venue, ultimately to the South Carolina Supreme Court. Dr. Holmes' appeal was dismissed as interlocutory. On August 17, 2004, after Dr. Holmes' first round of appeals concluded, Judge Barber in Richland County granted Defendants' Motion to Strike or for a More Definite Statement and required Dr. Holmes to serve and file an Amended Complaint within thirty (30) days. Then followed a number of appeals on various issues, each of which ultimately went to the South Carolina Supreme Court and each of which again was dismissed. Those appeals concluded in November,

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2006. Dr. Holmes then served an Amended Complaint that all Defendants answered. Dr. Holmes then moved to transfer venue back to Charleston County, which Motion was granted by Judge Childs in Richland County.[1] On February 3, 2007, Plaintiff filed and served another Amended Complaint, in which she added numerous additional claims and allegations against the Defendants, to which the Defendants timely filed answers. This final Amended Complaint was the pleading that formed the entire basis for the case that went to trial in June, 2009. It is this Amended Complaint that constituted the frivolous civil proceeding that Dr. Holmes instituted and continued and is the pleading on which Defendants' Motion for Sanctions is based. *See e.g. Horry County v. Parbel,* 378 S.E.2d 253, 266, n.1 (S.C. Ct. App. 2008).

Section 15-36-10(C)(1) of the Act, provides, in pertinent part that after a case has been dismissed by a directed verdict, upon motion of the prevailing party, the court *shall* proceed to determine if the claim was frivolous. S.C. CODE ANN. §15-36-10(C)(1). An attorney, party, or *pro se* litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or *pro se* litigant failed to comply with one of the following conditions:

> (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
>
> (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonable founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or

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1 As a further example of Dr. Holmes' manner of litigating, the Court notes that, in seeking transfer of venue from Richland County to Charleston County based upon the convenience of witnesses, Plaintiff submitted an affidavit stating that she had more than 50 physicians who were potential trial witnesses, all of whom were located in Charleston. Dr. Holmes called only 1 physician to testify at trial, and that testimony was completely irrelevant to any of Dr. Holmes' claims.

adjudication of the claim or defense upon which the proceedings are based.

Section 15-36-10(E) of the Act sets forth the elements a court should consider when determining whether an attorney, party, or a pro se litigant has violated the provisions of [the Act], stating the court shall take into account the following:

(1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to he allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

In particular, Dr. Holmes violated the Act by virtue of her baseless attempt to couch what was, in all events, a meritless legal malpractice case, as a far reaching conspiracy and fraud claim. Dr. Holmes never produced any tangible evidence to support any of her fifteen (15) separate causes of action, much less to support her legal malpractice case. Over the course of seven years of litigation, Dr. Holmes apparently failed to adduce an iota of evidence to support *any* of her claims—she failed to come forward with evidence to support any of the essential elements of her claims and causes of action and relied solely on her own conclusory narrative as the "proof" of the validity of her claims. Furthermore, she never provided any evidence whatsoever of her alleged damages. In short, though this case was pending and active for seven

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years, Dr. Holmes could not prove her case, and she failed to present any substantive evidence in support of her claims. She had no evidence of her damages, nor did she ever produce any substantive evidence of proximate causation. No reasonable attorney would have brought such claims without a shred of evidence to support the allegations Dr. Holmes made in her lengthy Amended Complaint, and no reasonable attorney would have pressed such claims without any evidence of damages.

Additionally, Dr. Holmes appealed nearly every ruling on pretrial motions throughout the case. All told, Dr. Holmes filed at least six separate appeals of interlocutory orders, failing on each and every one. Dr. Holmes appealed an order transferring venue; she appealed the dismissal of her motions filed in one county after venue had been transferred to another county; she appealed an order ruling that she could not proceed anonymously; and she appealed orders on discovery matters, including orders quashing her own improperly issued subpoenas. In each appeal, Dr. Holmes petitioned for writ of *certiorari* from the Supreme Court and, when that was denied, she requested *en banc* hearings and filed petitions for review of the decision in the original jurisdiction of the Supreme Court. Dr. Holmes has, quite simply, invoked every conceivable appellate procedure with respect to matters that were almost uniformly interlocutory.

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being reassigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Holmes engaged in a lengthy, albeit fruitless, administrative appeal of the Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her

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state court case against the Hospital.[2] In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges.[3] In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a $90,000 sanction for violation of the Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in the absence of evidentiary support. Her tactics have been dilatory, vexatious, that is, brought without sufficient grounds, oppressive and unreasonable. Her conduct clearly warrants a severe punishment.

Section 15-36-10(G) of the Act sets forth the sanctions allowable under the Act including (1) reasonable costs and attorney's fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith. "The determination of whether attorney's fees should be awarded under the

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2 In very similar fashion to the claims against these Defendants, Dr. Holmes alleged a wide array of claims against the Tennessee lawyers including attorney malpractice, unfair trade practices, civil conspiracy, promissory estoppel, conversion, and inadequate supervision, breach of fiduciary duty, and unspecified fraudulent conduct. *See Doe v.* Duncan, 2008 WL 4367314 (Tenn. Ct. App. 2008). Dr. Holmes' cases against the Tennessee attorneys have been dismissed in both states. Dr. Holmes appealed the Tennessee court's order granting summary judgment against her, but both the Court of Appeals of Tennessee and the Tennessee Supreme Court affirmed that decision. Dr. Holmes has appealed the dismissal of her South Carolina case as well.

3 In the 2005 case she sued East Cooper Hospital, Tenet HealthSystem Medical, Inc., Dr. John Grady, and Dr. Paul Yantis for (1) breach of contract; (2) breach of a covenant of good faith and fair dealing; (3) breach of contract accompanied by a fraudulent act; (4) civil conspiracy; and (5) violation of the South Carolina Unfair Trade Practices Act.

Frivolous Proceedings Act is treated as one in equity." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997). I find that Plaintiff should be sanctioned under the Act.

2. Dr. Holmes' claims are also sanctionable under the former §15-36-10.

Even were the former version of the Act to be applied, I find that Dr. Holmes' claims are, in fact, frivolous, completely without evidentiary support, and wholly meritless. Under the former provisions of §15-36-10:

> Any person who takes part in the procurement, initiation, continuation, or defense of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney's fees and court costs of the other party if:
>
> (1) he does so primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based; and
>
> (2) the proceedings have terminated in favor of the person seeking an assessment of fees and costs.

As is discussed above, Plaintiff had no logical or reasonable basis for bringing these claims against the Defendants. Section 15-36-20 is instructive in interpreting Section 15-36-10. It speaks in terms of reasonableness. Given my opportunities to observe and hear Dr. Holmes, I have no doubt she is sincere in her beliefs about this case. It is just that her beliefs are not reasonable. Any competent, reasonable attorney would reach this conclusion. Some of her unreasonable conclusions can be attributed to the fact that she has really never practiced law in any real sense of those words. This was revealed in her testimony when she tried to testify as her own expert. I cannot imagine a competent, experienced trial attorney telling her she had a case. It was unreasonable for her to conclude such on her own. She had no evidence of any sort that the Defendants did anything incorrectly, nor did she have any evidence that anything the Defendants did or did not do had any effect on her. Rather, her entire case consisted of a belief

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that everything bad that has happened in her career was the fault of the Defendants. Sadly, her blame was, and is, totally misplaced. This case never should have been brought in the first place.

Based on the foregoing, it is clear to me that Plaintiff's claims were completely frivolous within the meaning of the former §15-36-10 and that Plaintiff ought be assessed for payment of all or part of Defendants' attorney's fees.[4]

3. **Plaintiff's commencement and continuation of this action is sanctionable under Rule 11.**

Dr. Holmes is an attorney licensed to practice law in the State of South Carolina. Her license is active and she is in good standing with the South Carolina Bar. Rule 11 allows an award of attorney's fees when the court finds the opposing party has filed pleadings that were made in bad faith or were frivolous. *Harris-Jenkins v. Nissan Car Mart*, 557 S.E.2d 708, 711 (S.C. Ct. App. 2001). The standard for Rule 11 sanctions is essentially the same as that of the Frivolous Civil Proceedings Act. *Father v. S.C. Dept. of Soc. Services*, 578 S.E.2d 11, 15 (S.C. 2003).

As is set forth more fully above, it is clear to me that Plaintiff's claims were entirely frivolous and, for that reason, I find that Dr. Holmes is subject to sanction under Rule 11.

4. **Dr. Holmes' conduct is subject to sanction under the Court's inherent authority**

As the United States Supreme Court has held, Courts have an inherent authority to award attorney's fees where the losing party has "acted in bad faith, vexatiously, or for oppressive reasons." *See e.g. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975). Plaintiff

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[4] During Plaintiff's oral argument, she seemed to take the position that "attorney's fees" meant the fees charged by one attorney and that the Court could not award fees for all the attorneys and staff who worked on the defense of the case. Plaintiff's contention is unpersuasive and the Court rejects her position. The reality of the practice of law is that oftentimes several attorneys and staff work on large and complex cases and that all these fees and the expense of defending a frivolous suit can be assessed.

conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains. I find that Dr. Holmes' case against these Defendants was completely baseless and that she is subject to sanction based upon the inherent authority of courts to sanction litigants who act in bad faith, vexatiously, that is, without proper grounds, or for oppressive and improper purposes. It is not her actual intent to harm, but harm is the reasonably foreseeable outcome.

CONCLUSION

Dr. Holmes' frivolous case against James Becker, Manton Grier, and Haynsworth Sinkler Boyd, and her manner of litigating, and appealing, every issue in the case, has caused the Defendants to incur very substantial legal fees and costs over the seven year span of the case. The Defendants' actual attorneys' fees and expenses incurred in the defense of this action amounts to over $400,000.00. The attorneys' fees for trial alone were $27,531.00. Time spent preparing for trial (twice, due to Dr. Holmes' last minute plea for a continuance) resulted in actual attorneys' fees of $94,600.00. This case also resulted in Defendants having to pay $32,240.22 in expert witness fees. I find these fees to be reasonable and, given the manner in which Plaintiff chose to litigate this frivolous case, expected.

Furthermore, the Defendants themselves were forced to devote time to defending the case—time that was taken away from other clients and other matters, resulting in considerable lost opportunity costs to the Defendants. The Defendants' time devoted to defending Plaintiff's

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baseless claims resulted in the Defendant lawyers and their staff devoting nearly 600 hours of their own time to the case. Dr. Holmes' frivolous complaint and dilatory and vexatious actions resulted in lost opportunity costs to the Defendant lawyers more than $200,000.00 in lost revenue. The trial alone cost Defendants $36,752.00 in lost opportunity costs. The time spent preparing for trial resulted in lost opportunity costs for the Defendants equal to $45,844.00. Under Rule 11 and pursuant to the Court's inherent powers, the Court is authorized to award an appropriate sanction that may include a monetary award to defendants to compensate them for the revenue lost by these defendants.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

Based upon the foregoing, the Court sanctions Plaintiff, Dr. Cynthia Holmes, and enters judgment against her in the amount of $200,000.00. This represents a combination of some reasonable attorneys' fees, necessary costs and fees. I have not included any lost opportunity costs. It is not as much as is justified by the facts. I am giving Dr. Holmes a "break". It boils down to where this cost should fall--on Defendants' liability insurance carrier, or on Dr. Holmes who is obviously, in my opinion, laboring under an obsession not grounded in fact or reason. It is a figure that is tempered by equity and mercy, but I hope will deter her from similar conduct in the future.

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By this Order, the Court instructs the Clerk of Court to enroll the amount awarded as a sanction against Dr. Holmes on the Roll of Judgments as a judgment against her.

Pursuant to S.C. Code of Laws Section 15-36-10(G)(3), I enjoin Dr. Homes from filing any other suit on her own behalf. If she desires to file a suit for a claim of her own, she must have another attorney sign any pleading subsequent to this date. If she desires relief from this, she may petition by giving notice of such to the Chief Administrative Judge for the Circuit in which she wishes to file suit and may be heard on her petition within 30 days.

I cannot conclude without saying that my heart and sympathies go out to Dr. Holmes. It is painful for me to see and hear her put herself through this. She is well educated with a law degree and medical degree with a specialty. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help--legal and perhaps otherwise. I hope she gets it.

AND IT IS SO ORDERED.

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T. L. Hughston, Jr.

Thomas L. Hughston, Jr.
Presiding Judge

November 18, 2009
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CYNTHIA HOLMES, M.D.

Plaintiff,

vs.

HAYNSWORTH, SINKLER & BOYD, P.A., successor to SINKLER & BOYD, P.A., MANTON GRIER, and JAMES Y. BECKER,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
DOCKET NO. 07-CP-10-1444

ORDER DENYING PLAINTIFF'S MOTION TO ALTER/AMEND AND RECONSIDER JUDGMENT

FILED
2010 FEB -4 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before me on Plaintiff's Motion for me to Alter/Amend and Reconsider my prior Order. I have again considered everything that I know about this case, including Plaintiff's Memorandum in Support of the Motion. I respectfully deny this Motion.

AND IT IS SO ORDERED.

T. L. Hughston

Thomas L. Hughston, Jr.
Presiding Judge

February 4, 2010
Charleston, South Carolina

2007-CP10-1444

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

FILED
2014 AUG -7 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURT

Appellate Case No. 2010-154986

Appeal from Charleston County
Thomas L. Hughston, Jr., Circuit Court Judge

Opinion No. 27395
Heard October 16, 2012 – Filed June 4, 2014

AFFIRMED

Chalmers Carey Johnson, of Tacoma, Washington, for Appellant.

Richard S. Dukes, Jr., of Charleston, and R. Hawthorne Barrett, of Columbia, both of Turner, Padget, Graham & Laney, P.A., for Respondent.

CHIEF JUSTICE TOAL: Cynthia Holmes, M.D. (Appellant) appeals the circuit court's grant of a directed verdict with respect to her malpractice claim in favor of Haynsworth, Sinkler & Boyd, P.A. (Haynsworth), Manton Grier, and James Y. Becker (collectively Respondents), and award of sanctions against her. We affirm.

cc:
Chalmers Carey Johnson, Esquire
Richard S. Dukes, Jr., Esquire
R. Hawthorne Barrett, Esquire
The Honorable Julie J. Armstrong

FACTS/ PROCEDURAL BACKGROUND

Appellant, an ophthalmologist currently in private practice in Sullivan's Island, South Carolina, was previously a member of the consulting medical staff of Tenet HealthSystem Medical, Incorporated, d/b/a East Cooper Community Hospital, Incorporated (the Hospital).[1] On September 10, 1997, Appellant lost her privileges to admit patients and perform procedures at the Hospital. Appellant engaged Respondents to represent her in a legal action against the Hospital on May 5, 1998. On Appellant's behalf, Respondents pursued an unsuccessful appeal for reinstatement of full admitting privileges through the Hospital's administrative process, which was exhausted in October 1998.

In March 1999, Respondents filed a lawsuit in federal court on Appellant's behalf, alleging violations of the Sherman Anti-Trust Act, 15 U.S.C. §§ 1, *et seq.* (2004), as well as pendant state law claims.[2] Respondents filed a request for temporary injunction, which would permit Appellant to perform medical procedures at the Hospital. On November 22, 1999, the United States District Court for the District of South Carolina granted a temporary injunction reinstating Appellant's admitting privileges based, in part, on Appellant's averments in an affidavit that her patients needed urgent surgeries and her inability to perform surgery at the hospital was causing her to lose patients. However, because Appellant did not perform a single surgery in the wake of the temporary injunction, the district court dissolved the injunction on January 25, 2000, because "the alleged harm suffered by [Appellant's] current patients had not materialized."[3] Furthermore, the district court held that Appellant and Respondents failed to comply with the scheduling order and the rules of discovery. Appellant blames Respondents for the dissolution of the injunction, claiming that Respondents did not act with due diligence on her behalf because she disputed their fees and refused to pay her legal bills. Respondents, however, attribute the dissolution of the

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[1] Appellant also holds a license to practice law in South Carolina, but has not practiced in nearly thirty years with the exception of representing herself in litigation related to this matter.

[2] According to Respondent Becker, he initially advised Appellant to file the lawsuit in state court, but she insisted on filing the federal action.

[3] Respondent Becker testified at trial that Respondents did not appeal the dissolution because an appeal would have been futile.

injunction to Appellant's failure to utilize the injunction to perform surgery while it was in place and her lack of cooperation during discovery.[4]

As the federal case began in earnest, a fee dispute arose between Appellant and Respondents, resulting in Respondents filing a motion to be relieved as counsel. Respondent Becker testified that the relationship broke down due to communication issues between the parties, Appellant's continued mischaracterization of the parties' engagement agreement as a contingency agreement, and Appellant's refusal to pay her legal bills. Appellant alleges that Respondents agreed to take the case on a contingency fee basis once the preliminary injunction was successfully in place. However, the engagement letter states that "[f]ees generally are based on the time spent rounded up to the nearest tenth of an hour."[5] In addition, correspondence from Respondents to Appellant confirms that Respondents would not take the case on a contingency basis.[6]

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[4] For example, Respondent Becker testified that Appellant cancelled her deposition two days before it was to be held without reason and withheld documents from Respondents that would have assisted them in their representation of Appellant.

[5] The engagement letter set forth the terms of the parties' agreement and was signed by Appellant and Respondent Becker.

[6] For example, in a letter dated December 15, 1999, Respondent Becker wrote:

> What I meant to convey to you [Appellant] in prior conversation was that I would seriously consider and seek the necessary internal firm approval for converting your matter to contingency fee basis for any fees to be incurred past the preliminary injunction stage. This process would involve first seeking management committee approval to do so. The second step would be making my own decision in consultation with other lawyers in the firm . . . . [However,] [n]either I nor other litigators in the firm believe that we should proceed on contingency fee basis.
>
> We will not proceed forward on a contingency fee basis . . . .

Likewise, in a December 27, 1999, letter to Appellant, Respondent Becker stated unequivocally, "We have clarified and you understand that we are not representing you on a contingent fee basis."

However, on January 25, 2000, Respondents withdrew the motion because the parties were able to resolve the dispute through the execution of an addendum to the engagement letter (the Addendum), setting forth the terms of Respondents' engagement moving forward. In the Addendum, Appellant agreed to pay $43,000 in attorney's fees upfront, and pay any addition legal fees incurred at an hourly rate.[7]

On January 31, 2000, Appellant filed a pro se motion requesting the district court reconsider the dissolution of the preliminary injunction. In this motion, she also indicated she was dissatisfied with Respondents' representation and was critical of how Respondents had handled her case to that point and sought additional time to obtain substitute counsel and complete discovery. Because Appellant still refused to pay her legal bills, on February 2, 2000, Respondents filed a motion to be relieved as counsel.

On April 17, 2000, the district court granted summary judgment in the Hospital's favor, and dismissed the pendant state law claims without prejudice. Pursuant to the terms of the engagement letter, Respondents did not appeal this decision and chose not to proceed in representing Appellant in any state action.[8]

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[7] Appellant claims that the "[A]ddendum called for [Appellant] to pay [Respondents] $43,000.00 in fees, to be used if the case against [the Hospital] went to trial . . . . [, and that Respondents] never did represent [Appellant] in a trial, but failed to return the $43,000.00 in fees that [Appellant] had paid in advance for trial." However, the Addendum establishes that Appellant owed an outstanding unpaid balance of $19,471.44 and required Appellant to pay $15,000 upfront and "$25,000 now on account," and explicitly specified that fees "through the completion of discovery period and arguing of summary judgment motions will not exceed $25,000." The Addendum does not state that the remaining fees would be used only in the event the case went to trial.

[8] Appellant filed a pro se appeal from the district court's decision in the United States Court of Appeals for the Fourth Circuit, which was dismissed on November 17, 2000. She subsequently sought a writ of certiorari from the United States Supreme Court, which was denied on October 1, 2001. Ultimately, Appellant pursued a claim in state court with different representation that resulted in a settlement agreement with the Hospital in 2003. Appellant subsequently sued counsel in that action for malpractice, as well. That action was dismissed.

After Respondents and Appellant ended their professional relationship, Appellant sought the return of the $43,000 in attorney's fees she paid pursuant to the Addendum. Respondents refused, and on April 1, 2002, Appellant filed a Complaint alleging professional malpractice in handling her federal antitrust claims. She also included claims for breach of contract, quantum meruit, breach of fiduciary duty, violation of the Unfair Trade Practices Act, abandonment, civil conspiracy, promissory estoppel, constructive fraud, conversion, negligent misrepresentation, negligent supervision, fraud, and misrepresentation. However, Appellant did not deliver copies of the Summons and Complaint to the Richland County Sheriff's Department for service upon Respondents Becker and Grier until April 30, 2003.

Appellant filed her Summons and Complaint in Charleston County, and Respondents successfully moved to transfer venue to Richland County on July 24, 2002. Appellant appealed that decision on March 12, 2003. On May 1, 2003, the court of appeals dismissed the appeal as interlocutory. Appellant filed a petition for rehearing, which was denied on June 16, 2003. Appellant subsequently filed a petition for a writ of certiorari in this Court, which was denied on April 8, 2004. Appellant filed a petition for rehearing regarding the denial of certiorari, and remittitur was issued on April 22, 2004. Appellant filed a "Motion to Reinstate the Appeal" and a "Petition for Original Jurisdiction" on April 23 and April 26, 2004, respectively. After this Court refused to accept the first petition, Appellant filed a second petition for original jurisdiction. This Court denied the petition on June 9, 2004. Appellant then filed a petition for rehearing en banc, which the Court denied.

On August 17, 2004, the circuit court ordered Appellant, who had been attempting to proceed under a "J. Doe" pseudonym to proceed under her real name. On September 24, 2004, Appellant appealed this decision. The court of appeals dismissed this appeal as interlocutory on January 13, 2005. Appellant filed a petition for rehearing, which was denied on May 25, 2005. On June 20, 2005, Appellant filed a petition for a writ of certiorari and a motion for sanctions against Respondents in this Court, which were denied.

On October 29, 2004, Appellant appealed the circuit court's decision to dismiss various motions filed there by Appellant because venue had been transferred to Richland County. On June 16, 2005, the court of appeals dismissed this appeal. On June 28, 2005, Appellant filed a petition for rehearing which was denied, and on April 14, 2006, Appellant filed another petition for a writ of

certiorari in this Court, which was denied on October 19, 2006.

The circuit court transferred venue back to Charleston County on March 29, 2007. At this time, the case returned to the circuit court, where discovery resumed, and Appellant filed various discovery-related motions. In March 2008, the circuit court denied Appellant's motions. Appellant appealed this decision to the court of appeals, which dismissed the appeal as interlocutory on August 12, 2008. Appellant filed a petition for rehearing, which was denied on November 21, 2008, and a petition for rehearing en banc, which the court of appeals denied. On January 10, 2009, Appellant filed a "Petition for Writ of Certiorari in Original Jurisdiction and Petition for Certiorari" in this Court, which this Court denied on April 23, 2009. Remittitur was issued on April 29, 2009.[9] Subsequently, Appellant filed a petition for rehearing, which this Court denied on May 13, 2009.

Trial commenced on June 8, 2009, despite Appellant's last minute attempts to obtain a continuance. Prior to trial, the circuit court heard Respondents' pending motion for summary judgment, which he denied because he did not have time on the eve of trial to review the extensive file in this case. On June 12, 2009, the circuit court granted Respondents' directed verdict as to all causes of action.[10] Respondents subsequently moved for sanctions against Appellant. On July 19, 2009, Appellant filed a motion for new trial. The circuit court held a hearing on the post-trial motions on September 29, 2009. By order dated November 18, 2009, the circuit court denied Appellant's motion for a new trial, and granted Respondents' motion for sanctions.

Appellant filed a Notice of Appeal. On December 2, 2009, this Court issued an order directing all clerks of court to refuse any filings by Appellant unless they were signed by a licensed South Carolina attorney. Therefore, the court of appeals dismissed Appellant's appeal for failure to obtain a signature by a licensed attorney on February 24, 2010. On March 10, 2010, current counsel for Appellant moved to reinstate the appeal. However, Appellant failed to file a brief in time.

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[9] The instant case made its first trial roster appearance on April 8, 2008, and the clerk of court notified the parties of the transfer to the trial roster at that time. Pursuant to Rule 40(b), SCRCP, the circuit court issued a scheduling order stating the case would not go to trial before January 1, 2009.

[10] The circuit court signed a formal order to this effect on July 14, 2009.

Therefore, the court of appeals granted Respondents' motion to dismiss the appeal on June 10, 2011. Appellant filed another motion to reinstate the appeal on June 15, 2011, and filed an initial brief and designation of matter on July 14, 2011. On August 24, 2011, the court of appeals issued an order accepting those materials and reinstating the appeal.

This Court transferred the case pursuant to Rule 204(b), SCACR.

ISSUES

I. Whether Appellant timely commenced her action against Respondents Becker and Grier within the statute of limitations?

II. Whether the circuit court erred in granting a directed verdict in favor of Respondents as to Appellant's legal malpractice claims?

III. Whether the circuit court erred in refusing to grant Appellant's motion for continuance?

IV. Whether the circuit court erred in awarding sanctions against Appellant?

V. Whether the circuit court erred in dismissing the other causes of action?

ANALYSIS

I. Statute of Limitations

Appellant argues that the circuit erred in finding that the claims against Respondents Becker and Grier were barred by the statute of limitations. We disagree.

Section 15-3-530 of the South Carolina Code provides for a three year statute of limitations for legal malpractice lawsuits. S.C. Code Ann. § 15-3-530 (2005). "The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citation omitted). "The exercise of reasonable diligence means

simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party **might** exist." *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." *Dean*, 321 S.C. at 364, 468 S.E.2d at 647 (citation omitted).

In the instant case, as early as January 31, 2000, Appellant was openly critical of her attorneys' performance in a pro se filing in the district court:

> [My] Attorney, however, has not been timely: first taking months to schedule the Motion for Temporary Injunction; second not responding in a timely manner to your Honor's Scheduling order; third, not providing adequate representation and preparation of the case; and fourth, not notifying opposing counsel until the eleventh hour on January 4, 2000[,] of the request to reschedule the deposition which was made by letter dated December 17, 1999.

At that time, it is apparent that Appellant, an attorney, clearly should have known, and in fact *did* know, she had a potential claim against Respondents Becker and Grier, as these complaints appear to be the basis of her legal malpractice claim. Consequently, we find the statute of limitations began to run on January 31, 2000. *See Epstein*, 363 S.C. at 376, 610 S.E.2d at 818.

Appellant filed her Complaint against Respondents on April 1, 2002. However, Appellant did not timely serve her Complaint by forwarding it to the Richland County Sheriff's Department. *See* Rule 3(b), SCRCP ("For purposes of tolling the statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court *and delivered for service to the sheriff* of the county in which defendant usually or last resided . . . .") (emphasis added).[11]

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[11] In 2002, the South Carolina legislature amended section 15-3-20 of the South Carolina Code. S.C. Code Ann. § 15-3-20 (Supp. 2002). The new provision provides that a civil action commences as of the date of filing if actual service is accomplished within 120 days after filing and became effective on May 24, 2002. *Id.* It only applies to causes of action filed on or after that date. *Id.* Therefore, the new rule does not operate to render Appellant's service effective. Regardless,

The circuit court found that Appellant did not deliver the summons and complaint to the Richland County Sheriff's Department until after April 30, 2003—more than three years after January 31, 2000, when the statute of limitations began to run.[12]

Appellant relies on the circuit court's order dated February 5, 2008, denying Respondents Becker and Grier's partial summary judgment motion based on non-service, claiming the circuit court found that they waived their objection to service and to the statute of limitations defense. While the circuit court did deny Respondents Becker and Grier's motion, the order makes no mention of waiver. Consequently, we hold Respondents Becker and Grier did not waive their right to assert the statute of limitations as a defense.

Appellant also argues that the circuit court should have tolled the statute of limitations after Respondents Becker and Grier appeared and subjected themselves to the personal jurisdiction of the court by responding to Appellant's complaint on May 1, 2002, and participating in a motion to dismiss for lack of jurisdiction and a motion to transfer venue.

We have never tolled the statute of limitations by the date on which a party subjects himself to the personal jurisdiction of the court, and we decline to do so here. We hold that the claims against Respondents are barred by the statute of limitations because Appellant did not deliver a summons and complaint to the Richland County Sheriff's Department until after April 30, 2003—more than three years after she should have known that she had a cause of action against Respondents Becker and Grier. *Epstein*, 363 S.C. at 376, 610 S.E.2d at 818. Thus, we now turn to whether the remaining claims against Haynsworth were also properly dismissed by the circuit court.

II. Merits of the Professional Malpractice Claim

Appellant failed to accomplish service within 120 days after filing.

[12] Respondents served Requests to Admit on Appellant addressing the issue of when Appellant forwarded the summons and complaint to the Richland County Sheriff's Department. Because the circuit court found Appellant's responses inadequate, the circuit court deemed these requests admitted for all purposes.

Appellant argues that the Court erred in granting a directed verdict to Respondents with respect to her legal malpractice claim. We disagree.

"In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and to deny the motion where either the evidence yields more than one inference or its inference is in doubt." *Harvey v. Strickland*, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002) (citation omitted). "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* (citation omitted). In essence, the Court "must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor." *Id.* (citation omitted). "If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury." *Quesinberry v. Rouppasong*, 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998) (citation omitted).

A. Expert Testimony

First, Appellant argues the circuit court erroneously found that she failed to present expert testimony to support her malpractice claim. During trial, Appellant tendered herself as an expert regarding the applicable standard of care for professional malpractice. The circuit court disqualified Appellant as an expert witness, finding she lacked the requisite experience as an attorney to testify as an expert concerning the applicable standard of care in a federal anti-trust action. Appellant argues this decision was erroneous. We disagree.

"The qualification of an expert witness and the admissibility of an expert's testimony are matters within the trial court's discretion" and will not be overturned absent a finding of abuse of that discretion. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 344, 468 S.E.2d 633, 636 (1996) (citing *Creed v. City of Columbia*, 310 S.C. 342, 426 S.E.2d 785 (1993)). "An abuse of discretion occurs when the circuit court's rulings 'either lack evidentiary support or are controlled by an error of law.'" *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. Regardless of

whether the expert testimony is scientific, technical or otherwise, "all expert testimony must meet the requirements of Rule 702." *Graves*, 401 S.C. at 74, 735 S.E.2d at 655 (2012) (citing *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)).

> In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." Second, the expert must have "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," although he "need not be a specialist in the particular branch of the field." Finally, the substance of the testimony must be reliable.

Id. (internal citations omitted) (quoting *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010)).

With respect to a legal malpractice claim, a claimant must rely on expert testimony to "establish both the standard of care and the deviation by the defendant from such standard." *Gilliland v. Elmwood Props.*, 301 S.C. 295, 301, 391 S.E.2d 577, 580 (1990) (citation omitted); *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435, 472 S.E.2d 612, 613 (1996); *Hall v. Fedor*, 349 S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002). In this regard, a claimant must establish, through expert testimony, the following:

> (1) the existence of an attorney-client relationship;
>
> (2) a breach of duty by the attorney;
>
> (3) damage to the client; and
>
> (4) proximate cause of the plaintiff's damages by the breach.

Hall, 349 S.C. at 174, 561 S.E.2d at 656. Furthermore, a claimant is required to demonstrate that "he or she 'most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice.'" *Doe v. Howe*, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005) (quoting *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997)). "The question of the success of the underlying claim, if suit had been brought, is a question of law." *Id.* (footnote omitted).

Appellant argues that the mere fact that she is a licensed attorney qualifies her as an expert in the field of the applicable standard of care in a federal anti-trust action.

Regardless of her status as a licensed attorney, Appellant was required to demonstrate to the circuit court's satisfaction that she had the requisite training, experience, and education to testify as an expert witness in this case. Although Appellant is a licensed attorney, we agree Appellant was unqualified to testify as an expert regarding the applicable standard of care for attorneys handling a federal antitrust lawsuit due to the mere fact that she is licensed to practice law. First, Appellant is a physician, and has not practiced law in over thirty years. She does not represent clients, and in fact, has never represented a client other than herself at various points in this litigation, and has never represented a client in federal court, let alone handled a federal anti-trust action. Under these undisputed facts, the circuit court did not abuse its discretion in disqualifying Appellant from testifying as an expert as to the standard of care in this case.[13]

As Appellant failed to present any expert testimony supporting her contention that Respondents breached their standard of care, Appellant was unable to satisfy her burden of proof, meaning there was no issue of fact to submit to the jury. As such, the record before the circuit court permitted only one reasonable inference—that Respondents did not breach the standard of care, and were entitled to a direct verdict.

2. Respondents' Expert Testimony

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[13] Furthermore, Appellant misapprehends the "common knowledge" exception to the requirement for expert testimony. Under the common knowledge exception, expert testimony is not required where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence on the part of the professional and to determine the presence of the required causal link between the professional's performance and the alleged malpractice. *Pederson v. Gould*, 288 S.C. 141, 142, 341 S.E.2d 633, 634 (1986). Here, Appellant overestimates the legal knowledge of a layperson to understand the complex issues of her case, including the intricacies of civil procedure, the standard for applying and granting injunctions, and how to successfully pursue a federal anti-trust claim. Therefore, we find that Appellant's claim does not fall within the exception.

Alternatively, Appellant argues that Respondents' own expert, Professor John Freeman, conceded they committed professional malpractice. More specifically, Appellant avers that Professor Freeman, "testified that what [R]espondents did when they threatened to prejudice the case in order to extract fees was consistent with extortion, a form of blackmail, and criminal in South Carolina." We disagree.

Professor Freeman's comments have been taken out of context. In his testimony, Professor Freeman repeatedly and unequivocally stated that he believed Respondents did not commit malpractice and nothing Respondents did in representing Appellant would have altered the result given applicable federal anti-trust law.[14] However, during Appellant's cross-examination of Professor Freeman, the following colloquy ensued:

> Q: Do you believe that threatening a case in order to—threatening to prejudice a case in order to extract fees is—complies with the standard of care?
>
> A: No, ma'am. Let me be real clear on this. I . . . consider that would be unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that . . . .
>
> Q: And isn't it true that if a contingency fee was in place, . . . then . . . forcing . . . the terms of this Addendum . . . would be a breach of the standard of care?

Respondents' counsel objected to the line of questioning, and the circuit court sustained the objection on the ground that Appellant assumed facts not in evidence, as Professor Freeman had already testified that there was no evidence of a contingency fee agreement between the parties.

Considering Professor Freeman answered a hypothetical question which was not based on the facts of this case, we find Appellant's reliance on this testimony is specious. Consequently, it cannot form the basis for establishing a breach of the

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[14] For example, Professor Freeman testified, Appellant lost the "lawsuit because there was no case there—no federal antitrust case, and the judge found various technical, legal failings with the case."

standard of care.[15]

Thus, we affirm the circuit court's finding that Appellant's malpractice claim fails as a matter of law, and find the circuit court did not err in directing a verdict in favor of Respondents.

III. Continuance

Appellant argues that the circuit court erred in refusing to grant her a continuance, claiming the trial court set a trial date less than thirty days from the date of remittitur. We disagree.

Rule 40(b), SCRCP, provides:

> The clerk initially shall place all cases in which a jury has been requested on the General Docket. *A case may not be called for trial until it has been transferred to the Jury Trial Roster. Trial shall be had no earlier than 30 days from the date the case first appears on the Jury Trial Roster.* Cases shall be called for trial in the order in which they are placed on the Jury Trial Roster, *unless* the court in a Scheduling Order has set a date certain for the trial, *or, after the case has been set on the Jury Trial Roster, the court, upon motion, grants a continuance as provided in (i) below.* The first 20 cases on the Jury Trial Roster at the opening of court on the first day of a term, excluding those previously dismissed, continued or otherwise resolved before the opening of that term of court, may be called for trial.

(Emphasis added).

The instant case first appeared on a trial roster on April 8, 2008, and the clerk of court notified the parties of the transfer to the trial roster at that time. On that date, the circuit court issued a scheduling order stating the case would not be set for trial before January 1, 2009. This Court denied certiorari after Appellant instituted interlocutory appeals stemming from a discovery order issued by the circuit court. Remittitur was issued on April 29, 2009. On May 1, 2009, Appellant

[15] In any event, Professor Freeman qualified his answer by explaining that there was no evidence of any contingency fee agreement between the parties in the instant case, and that he did not believe Respondent breached any standard of care.

filed a motion to strike the case from the jury trial roster. The Chief Administrative Judge for the Tenth Judicial Circuit denied Appellant's motion to strike, noting that the case first appeared on the trial roster in April 2008. Therefore, after this Court denied Appellant's petition for rehearing, the Chief Administrative Judge returned the case to the jury roster. On May 18, 2009, the case was called for trial. After granting Appellant a one-week continuance, the court set the case for a date-certain trial to begin on June 8, 2009. Appellant objected and filed numerous motions to delay the start of the trial, arguing that she needed additional time to prepare and arrange for her counsel to be present. The chief administrative judge noted Appellant had previously requested numerous continuances to obtain counsel, but had failed to do so in the past. Consequently, the circuit court denied Appellant's continuance request and allowed the case to proceed to trial on June 8, 2009.

Appellant argues that because the Court denied her motion on May 18, 2009, returning the case to the jury docket, the circuit court erred in commencing trial on June 8, 2009, less than thirty days from "remittitur." As stated previously, in actuality, remittitur was issued on April 29, 2009. Therefore, even assuming *arguendo* that Appellant's understanding of Rule 40(b) was correct, a trial date of June 8, 2009, fell more than thirty days after remittitur.

However, Appellant misapprehends Rule 40(b). Rule 40(b) provides, in pertinent part, that trial shall take place *no earlier* than 30 days from the date the case *first appears on the jury roster*. As stated, *supra*, Appellant's case first appeared on a trial roster on April 8, 2008. The mere fact that an appeals court touched the case does not re-start the cycle. Therefore, the trial date complied with Rule 40(b), SCRCP.

We further affirm the circuit court's denial of Appellant's request for a continuance. Under Rule 40(i)(1), SCRCP, a court may grant a continuance for cause as follows:

> As actions are called, counsel may request that the action be continued. If good and sufficient cause for continuance is shown, the continuance may be granted by the court. Ordinarily such continuances shall be only until the next term of court. Each scheduled calendar week of circuit court shall constitute a separate term of court.

As noted by the chief administrative judge, Appellant did not establish good and

sufficient cause to continue her case to the next term of court, as she had repeatedly requested a continuance on the same ground of failure to secure counsel, and no counsel appeared on her behalf. Moreover, due to the relative age of the case, the circuit court was justified in disposing of it. Therefore, we find the circuit court did not abuse its broad discretion in denying her request for a continuance. *See Pyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record . . . . Moreover, the denial of a motion for a continuance on the ground that counsel has not had time to prepare is rarely disturbed on appeal.") (citations omitted); *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant . . . . Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens' teeth.").

IV. Sanctions

Appellant argues the circuit court abused its discretion in awarding sanctions against her. We disagree.

On November 18, 2009, the circuit court found Appellant's lawsuit to be frivolous, and awarded sanctions to Respondents. The circuit court found Appellant was subject to sanctions based on the following: (1) both iterations of the South Carolina Frivolous Civil Proceedings Sanctions Action, S.C. Code Ann. §§ 15-36-10, et seq. (2005) and S.C. Code Ann. § 15-36-10 (Supp. 2012) (the FCPSA); (2) Rule 11, SCRCP; and (3) the court's inherent authority to award sanctions.

A. The FCPSA

Because "the decision whether to impose sanctions under the FCPSA is a decision for the judge, not the jury, it sounds in equity rather than at law." *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003) (refusing to adopt the more deferential "abuse of discretion" federal standard of review in assessing decisions to impose sanctions under the FCPSA); *see also Se. Site Prep, L.L.C. v. Atl. Coast Builders & Contractors, L.L.C.*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011) ("The determination of whether attorney's fees should be awarded under Rule 11 or under the [FCPSA] is treated as one in equity.").

Therefore, an appellate court reviews the findings of fact with respect to the decision to grant sanctions under the FCPSA by "taking its own view of the evidence." *Father*, 353 S.C. at 260, 578 S.E.2d at 14 (citing S.C. Const. art. V, § 5); *see also* S.C. Code Ann. § 14-3-320 (Supp. 2012). However, "[t]he 'abuse of discretion' standard . . . does . . . play a role in the appellate review of a sanctions award." *Father*, 353 S.C. at 261, 578 S.E.2d at 14. For example, "where the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citation omitted); *Se. Site Prep*, 394 S.C. at104, 713 S.E.2d at 654. "An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions." *Father*, 353 S.C. at 261, 578 S.E.2d at 14.

As an initial matter, Appellant contends that the circuit court erred in sanctioning her under the 2005 revised version of the FCPSA, and argues that the circuit court should have instead relied on the pre-2005 version of the FCPSA, as she filed the original complaint in 2002. Therefore, she claims the circuit court erred in basing sanctions on her amended complaint, which she filed in 2007. To this end, Appellant argues that her amended complaint "relates back" to her original complaint pursuant to Rule 15(c), SCRCP. *See* Rule 15(c), SCRCP ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."). Therefore, Appellant contends, the action on which the sanctions were based was not a "new" action for purposes of dating the sanctions.

Regardless of the version applied, we find the circuit court did not err in sanctioning Appellant pursuant to the FCPSA.

Under the prior provisions of the FCPSA:

> Any person who takes part in the procurement, initiation, continuation, or defense of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney's fees and court costs of the other party if:
>
> (1) he does so primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based; and

(2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.

S.C. Code Ann. § 15-36-10 (2005). Thus, the party seeking sanctions bears the burden of proving:

(1) the other party has procured, initiated, continued, or defended the civil proceedings against him;

(2) the proceedings were terminated in his favor;

(3) the primary purpose for which the proceedings were procured, initiated, continued, or defended was not that of securing the proper discovery, joinder of parties, or adjudication of the civil proceedings;

(4) the aggrieved person has incurred attorney's fees and court costs; and

(5) the amount of the fees and costs set forth in item (4).

Id. § 15-36-40.[16]

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[16] In 2005, the General Assembly substantially amended section 15-36-10, and repealed sections 15-36-20 through -50. *See* Act No. 27, 2005 S.C. Acts 114, § 5 (effective July 1, 2005) (revising § 15-36-10); Act No. 27, 2005 S.C. Acts 121, § 12 (effective March 21, 2005) (repealing §§ 15-36-20 through -50).

Section 15-36-10 now reads, in pertinent part:

At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.

S.C. Code Ann. § 15-36-10(C)(1) (Supp. 2012).

Here, the circuit court found:

> As became evident throughout the trial, [Appellant] filed a non-meritorious and baseless lawsuit. Prior to filing suit, [Appellant] obviously conducted no serious investigation of the facts she would be required to prove to substantiate her wide-ranging claim. Rather, the entire tenor of [Appellant's] case appears to be her belief that she is right and her former lawyers and 4 other courts are all wrong. [Appellant] failed to develop any evidence that could satisfy her burden of proof at trial. Any reasonable attorney would conclude that [Appellant's] entire case was completely frivolous and was brought, and continued for seven years, without any reasonable basis.
>
> [Appellant] engaged in dilatory litigation tactics and appealed numerous interlocutory matters, including orders regarding venue and several orders on discovery matters. These appeals were likewise frivolous and dilatory. [Appellant] also submitted numerous affidavits and memoranda accusing [Respondents] and [Respondents'] counsel of engaging in all manner of inappropriate and abusive conduct, each of which has been dismissed and discounted by the Court, and all of which were submitted without reasonable basis. [Appellant] has never accepted the rulings of the Court and has moved for reconsideration on each and every order denying whatever relief she sought, sometimes multiple times.

The Record supports the circuit court's finding that Appellant's claim was frivolous. However, Appellant argues that failure of the moving party to prevail on summary judgment under any circumstances precludes an award of sanctions pursuant to the the FCPSA based on the reasoning of *Hanahan v. Simpson*, 326 S.C. 140, 156–58, 485 S.E.2d 903 (1997).[17]

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[17] In *Hanahan v. Simpson*, 326 S.C. 140, 156–58, 485 S.E.2d 903, 911–13 (1997), this Court overturned sanctions awarded against an appellant under the FCPSA. In *Hanahan*, the appellant, the daughter of the decedent, challenged the will left behind by her late father to dispose of his $48 million estate. 326 S.C. at 146, 485 S.E.2d at 906. She sued his estate alleging fraud, mistake, undue influence, and lack of testamentary capacity. *Id.* The estate moved for summary judgment, and the court denied the motion. *Id.* After a trial on the merits, the jury returned a verdict against the daughter, and the circuit court sanctioned the daughter pursuant

Even if Appellant's interpretation of *Hanahan* is correct, the circuit court also imposed sanctions pursuant to Rule 11, SCRCP, and we hold that Rule 11 sanctions were appropriate in this case.

Under Rule 11,

> Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record . . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay . . . .
>
> If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11(a), SCRCP.[18]

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to the FCPSA. *Id.* On appeal, this Court acknowledged that there was a split of authority as to whether sanctions may be awarded under the FCPSA notwithstanding the denial of a summary judgment. *Id.* at 157, 485 S.E.2d at 912. Nevertheless, the Court reversed the circuit court's award of sanctions, reasoning that if the daughter's case survived a motion for summary judgment and was "submitted to the jury" because of its merits, "it cannot be deemed frivolous" later. *Id.*

[18] Because we find that sanctions were appropriately awarded pursuant to Rule 11, SCRCP, we do not reach the question of whether sanctions were appropriate according to the Court's inherent authority to award sanctions. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999)

The circuit court found that Appellant engaged in "dilatory litigation tactics," lodged "frivolous and dilatory appeals," filed affidavits and memoranda "without reasonable basis," and moved for reconsideration after nearly every ruling made by the circuit court. Without a doubt, the circuit court did not abuse its discretion in awarding sanctions against Appellant in this case. Therefore, we affirm.

V. Remaining Issues

Appellant also claims the circuit court erred in directing a verdict in favor of Respondents on the issues of breach of contract, quantum meruit, breach of fiduciary duty, violation of the Unfair Trade Practices Act, abandonment, civil conspiracy, promissory estoppel, constructive fraud, conversion, negligent misrepresentation, negligent supervision, fraud, and misrepresentation. However, Appellant addresses neither the merits nor the law of these issues in her brief and merely mentions them in a laundry list of claims she presented to the circuit court. Thus, we find Appellant abandoned these arguments. *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) ("A bald assertion, without supporting argument, does not preserve an issue for appeal.") (citation omitted).

CONCLUSION

For the foregoing reasons, the circuit court is

AFFIRMED.

KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in a separate opinion in which BEATTY, J., concurs.

(holding an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

JUSTICE PLEICONES: I concur but write separately as I view the proper disposition of several issues somewhat differently than does the majority.

The majority affirms the trial court's grant of a directed verdict to the individual respondents on the grounds of insufficient service. As I understand the applicable law, however, these respondents waived their right to rely upon the belated service when they failed to raise the issue pursuant to Rule 12(h), SCRCP. *See Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993). Failure to properly raise this issue under the rule also operates as a waiver of a statute of limitations defense. *Id.*; *see also Unisun Ins. v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000). Assuming appellant has properly preserved this argument,[19] this directed verdict ruling was incorrect.

I am also uneasy with the Court's discussion of the trial court's ruling that appellant was not qualified to testify as an expert. I fear the majority's opinion may be read to require a legal expert to have experience in the exact area of law that is the subject of the malpractice claim. Heretofore, we have not required such congruity. *See Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 487 S.E.2d 596 (1997) (medical expert qualifications). With the caveat that an individual need not have practical experience in the exact same type of case in order to be qualified as an expert, I agree that there was no abuse of discretion in the trial court's decision not to qualify appellant as a legal expert. *Gooding*, *supra* (qualification of expert is within trial court's discretion). I therefore agree that the directed verdict should be affirmed as to both the firm and the individual respondents.

I agree with the majority that appellant cannot complain that Rule 40(b), SCRCP, was violated where more than 30 days passed after the remittitur was returned before the case was called for trial. Further, I agree with appellant that the original version of the FCPSA and not the amended version applies here. *See* 2005 S.C. Acts No. 27 § 16(3) 123 (revised FCPSA applies to causes of action arising on or after July 1, 2005). Thus the trial court erred as a matter of law in awarding sanctions under the FCPSA. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997). I agree, however, that we should affirm the award of sanctions under Rule 11, SCRCP.

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[19] To the extent her argument rests on the circuit court's March 2008 denial of the individual respondents' motion for summary judgment, appellant's argument fails as a matter of law. *E.g. Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994).

I concur in the result reached by the majority.

BEATTY, J., concurs.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker,

Defendants.

C/A NO: 2007-CP-10-01444

FILED
2017 JAN 18 PM 2:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

RULE TO SHOW CAUSE IN SUPPLEMENTARY PROCEEDINGS AND ORDER OF REFERENCE

Judgment having been rendered, an execution issued, and a *nulla bona* return made to said execution, the Defendants, Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker, having moved for an examination of Plaintiff, Cynthia Holmes, M.D., under oath in Supplementary Proceedings, pursuant to the provisions of South Carolina Code Ann. §15-39-310, *et. seq.*; It is therefore,

ORDERED that Plaintiff, Cynthia Holmes, M.D., DO APPEAR before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, South Carolina, 100 Broad Street, Courtroom 2-A, Charleston, South Carolina, on the 10th day of March, 2017, at 10:30 o'clock in the AM to answer under oath concerning her assets, and TO SHOW CAUSE why her property should not be applied toward satisfaction of the Judgment set out in the Petition; and TO SHOW CAUSE why a Receiver of such property should not be appointed, pursuant to the provisions of South Carolina Code Ann. § 15-39-430.

IT IS FURTHER ORDERED that, pursuant to South Carolina Code Ann. §§ 14-11-90 and 15-30-390, this matter being referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County to entertain and rule upon all motions necessary to dispose of this matter, to include, but not be limited to, motions to appoint a receiver, motion to continue the matter, motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt,

1 of 2

motions to dismiss, and having authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court.

IT IS FURTHER ORDERED that this Rule to Show Cause may be served on the Defendant by means of a private process server.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING the following:

1. Bank statements for all bank accounts [checking, savings, financial accounts, certificates of deposit, etc...] of Plaintiff from 2014 to the present;
2. Financial Statements from 2014 to the present;
3. Copies of all pay stubs from 2014 to the present;
4. All stock certificates;
5. All licenses and franchise agreements;
6. All State and Federal Tax Returns from 2014 to the present;
7. All insurance policies [personal, automobile, real estate];
8. Records of any real estate owned, either in whole or in part by Plaintiff since 2012;
9. Records of automobiles, trucks, trailers, boats, ATV's, and other vehicles and accessories;
10. Any inventories of personal property now or formerly owned from 2014 to the present;
11. Records of all inventories of furniture, fixtures, and/or equipment owned in whole or in part;
12. Copies of any contracts entitling you to payment of money.

IF YOU FAIL TO APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

Presiding Judge

Dated: Jan. 13, 2017
Charleston, South Carolina

DM: 4785898 v.1

2nd DLG

PAID
Date 12/21/16
Amount $25.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By:

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes — PLAINTIFF(S)

Haynesworth Sinkler Boyd, et al. — DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2017 FEB -9 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to pracitce of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | 3062 Judge Code | Date 2/8/17

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	2007-CP-10-01444
	)	
Cynthia Holmes, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**ORDER VACATING ORDER OF**
Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer, and James Y. Becker,	)	**REFERENCE FILED JANUARY 3, 2017**
	)	
Defendants.	)	

FILED
2017 FEB 10 AM 11:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

On January 3, 2017, an Order of Reference was filed with the Charleston County Clerk of Courts referring the above captioned case to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, for supplementary proceedings. The January 3, 2017 Order did not indicate a date and time when the supplementary proceedings would be heard. Subsequent to that Order, on January 18, 2017, an Order of Reference was filed with the Charleston County Clerk of Courts referring this case to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, for supplementary proceedings. This subsequent Order provided a date and time, March 10, 2017, when the supplementary proceedings would be heard. As such, this Court vacates its Order of Reference previously filed on January 3, 2017.

IT IS ORDERED that this Court's Order of Reference filed on January 3, 2017 is hereby VACATED.

IT IS SO ORDERED!

February 9, 2017
Charleston, South Carolina

Roger M. Young Sr.
Circuit Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10- 1444

C Holmes

PLAINTIFF(S)

Haynesworth, Sinkler, Boyd

DEFENDANT(S)

Submitted by: Master in Equity	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED
2017 MAR 14 AM 8:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: Motions to Quash are both granted.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062
Judge Code

3/10/17
Date

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C Holmes

-v-

Haynesworth, Sinkler, Boyd

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER:

2009-CP-10-1444

SUPPLEMENTAL PROCEEDING ORDER

FILED
2017 MAR 14 AM 8:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

A Hearing was held in the above captioned case on 3/10/17

_____ 1. No assets were discovered.

_____ 2. The Defendant agreed to pay _____

_____ 3. The hearing was not held because : _____

_____ a. the Defendant was not served and the hearing has been rescheduled for _____.

_____ b. the Defendant did not appear and a RTSC has been scheduled for _____.

_____ c. the parties requested the hearing be rescheduled for _____.

_____ d. the Plaintiff elected not to proceed.

X e. Holmes has 30 days to provide all documentation on assets to Haynesworth, thereafter a receiver will be appointed to review the assets available to satisfy the judgment * to recommend to court on how to proceed. If not provided

_____ 4. The supplemental proceedings is held open until _____ to include sale of her home.

_____ 5. The supplemental proceedings is dismissed and canceled without prejudice. All Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed.

* No funds shall be transferred/asset values diminished.

Mikell R. Scarborough
~~Master in Equity~~ for Charleston County

Charleston, SC
Dated: 3/10/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C Holmes

-v-

Haynsworth, Sinkler, Boyd

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER:

2007-CP-10-1444

SUPPLEMENTAL PROCEEDING ORDER

FILED
2017 JUN 21 AM 9:35
JULIE J. ARMSTRONG
CLERK OF COURT

A Hearing was held in the above captioned case on 6/16/17

_____ 1. No assets were discovered.

_____ 2. The Defendant agreed to pay _____

_____ 3. The hearing was not held because: _____

_____ a. the Defendant was not served and the hearing has been rescheduled for _____

_____ b. the Defendant did not appear and a RTSC has been scheduled for _____

_____ c. the parties requested the hearing be rescheduled for _____

_____ d. the Plaintiff elected not to proceed.

X e. Δ is required to provide documents to Π counsel. $2500 contempt sanction is issued. An Order to Bank of America to comply w/subpoena issued for information is entered. Formal OTF.

_____ 4. The supplemental proceedings is held open until _____

_____ 5. The supplemental proceedings is dismissed and canceled without prejudice. All Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed.

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC
Dated: 6/16/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker,

Defendants.

C/A NO: 2007-CP-10-01444

FILED
2017 JUN 23 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER GRANTING DEFENDANTS' MOTION TO COMPEL & FOR SANCTIONS

This matter comes before the Court on the motion of Defendants Haynsworth Sinkler Boyd, P.A., Manton Greer and James Y. Becker ("Defendants") to compel Plaintiff Cynthia Holmes, M.D.'s ("Holmes") to produce documents previously ordered by the Court in its Rule to Show Cause Order, filed on March 9, 2017, and to compel Bank of America to respond to a subpoena issued by Defendants. A hearing was held before me on June 16, 2017. Holmes appeared *pro se*, and Defendants appeared through their attorney, Mary M. Caskey. Holmes admitted that she has only produced tax returns for 2014 and 2015, and has failed to produce any other documents required. She also objected, without legitimate reason, to a validly issued subpoena.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUGED, AND DECREED AS FOLLOWS:

1. Holmes shall produce to Defendants the following documents no later than ten (10) days after entry of this Order:

a. Bank statements for all bank accounts [checking, savings, financial accounts, certificates of deposit, etc....] of Plaintiff from 2014 to the present;

b. State and Federal tax returns for 2016, or proof of a request for an extension to file the same; and

c. Copies of any contracts entitling her to payment of money.

2. Bank of America is ordered to comply with the subpoena issued by the Defendants dated April 3, 2017, to produce copies of payment history, including payoff amount, in connection with the mortgage given to NationsBanc Mortgage Corporation by James Kevin Holmes and Spouse, Cynthia Elaine Holmes, in the amount of $227,250.00 dated February 11, 1994 and recorded in the Office of the Charleston County Register of Deeds in Book F239, Page 604. Bank of America shall comply with the subpoena within fourteen (14) days of service of this Order on Bank of America.

3. Holmes shall pay sanctions in the amount of two thousand five hundred dollars ($2,500), payable to "Haynsworth Sinkler Boyd, P.A.," which shall be postmarked to Haynsworth Sinkler Boyd, P.A., Attn: Mary Caskey, P.O. Box 11889, Columbia, SC 29211-1889, no later than ten (10) days after entry of this order.

4. In the event that Holmes fails to comply with this Order, she shall be in contempt of court, and Defendants may be entitled to sanctions, to include an award of attorneys' fees and expenses, and the Court may order such other and further relief as may be just and proper.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough

6/20/17

Charleston, South Carolina

2007-CP-10-1474

The South Carolina Court of Appeals

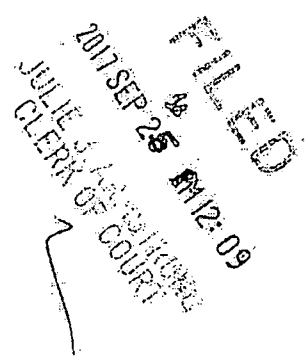
Cynthia Holmes, Appellant,

v.

Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A.; Manton Grier; and James Y. Becker, Defendants,

Of whom Manton Grier and James Y. Becker are Respondents.

Appellate Case No. 2017-001460



ORDER

The appellant filed a pro se notice of appeal from an order of the circuit court indicating a formal order is forthcoming. This appeal is dismissed because the order on appeal is not a final order. *See Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009) (finding a form order indicating a formal order will follow is not in any way final). Furthermore, this Court is prohibited from accepting any further pro se filings from the appellant in actions related in any way to the revocation of her medical staff privileges. *Doe v. Duncan*, S.C. Sup. Ct. order dated December 2, 2009. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

Columbia, South Carolina

cc:
Cynthia Holmes
Mary M Caskey, Esquire

FILED
July 7, 2017

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 22, 2017

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

FILED
2017 SEP 25 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT

Re: Cynthia Holmes v. Haynsworth (4)
Lower Court Case No. 2007CP1001444
Appellate Case No. 2017-001460

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Cynthia Holmes
Mary M Caskey, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

FILED
2017 SEP 29 PM 2:20
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

This matter is before me on the motion of Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. As set forth in the motion, Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not claim any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they are dismissed as petitioners, and Haynsworth Sinkler Boyd, P.A. is the sole remaining petitioner in this action.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough
Charleston County Master-In-Equity

9/26, 2017
Charleston, South Carolina

The Supreme Court of South Carolina

Cynthia Holmes, Petitioner,

v.

Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A.; Manton Grier; and James Y. Becker, Defendants,

Of whom Manton Grier and James Y. Becker are Respondents.

FILED
2017 NOV 20 AM 9:47
JULIE J. ARMSTRONG
CLERK OF COURT

Appellate Case No. 2017-001598
Lower Court Case No. 2007-CP-10-01444

ORDER

Based on the vote of the Court, the petition for a writ of certiorari to the Court of Appeals is denied and the motion to amend the caption is denied as moot.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

November 15, 2017

cc:
Mary M Caskey, Esquire
Chalmers Carey Johnson, Esquire

Mary Cothonneau Eldridge, Esquire
The Honorable Julie J. Armstrong
The Honorable Jenny Kitchings

2007-CP-10-1444

The South Carolina Court of Appeals

Cynthia Holmes, Appellant,

v.

Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A.; Manton Grier; and James Y. Becker, Defendants,

Of whom Manton Grier and James Y. Becker are Respondents.

Appellate Case No. 2017-000266

FILED
2017 NOV 30 AM 11:14
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER

After careful consideration of the filings in this case, the Court concludes that the notice of appeal stems from an action related to the revocation of the appellant's medical staff privileges. Accordingly, the appellant's pro se filings are refused and this appeal is dismissed. *Doe v. Duncan*, S.C. Sup. Ct. order dated December 2, 2009 ("[W]e hereby direct the Clerks of Court in this state to refuse to accept further filings from [Holmes] in actions related in any way to the revocation of her medical staff privileges. . . unless they are filed by an attorney, other than [Holmes], licensed to practice law in this state."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

C.J., J.
FOR THE COURT

Columbia, South Carolina
cc:
Cynthia Holmes
Mary M. Caskey, Esquire

FILED
Apr 1 7 2017

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

November 28, 2017

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

FILED
2017 NOV 30 AM 11:14
JULIE J. ARMSTRONG
CLERK OF COURT

REMITTITUR

Re: Cynthia Holmes v. Haynsworth (3)
Lower Court Case No. 2007CP1001444
Appellate Case No. 2017-000266

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Cynthia Holmes
Mary M Caskey, Esquire
Chalmers Carey Johnson, Esquire

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

Appellate Case No. 2017-002403

ORDER

Appellant filed a pro se notice of appeal from the circuit court's order of September 29, 2017. After careful consideration of the parties' filings, this appeal is dismissed because this Court is prohibited from accepting pro se filings from Appellant in actions related in any way to the revocation of Appellant's medical staff privileges. *See Doe v. Duncan*, S.C. Sup. Ct. order dated December 2, 2009.

FOR THE COURT

Columbia, South Carolina

cc:
Cynthia Holmes
Mary M Caskey, Esquire

FILED
March 29, 2018

From: SCDEfilingstat@scd.uscourts.gov
Sent: Wednesday, June 13, 2018 1:52 PM
To: scd_ecf_nef@scd.uscourts.gov
Subject: Activity in Case 2:17-cv-02949-PMD-BM Holmes v. Becker et al Order on Motion to Strike

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply**

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 6/13/2018 at 1:52 PM EDT and filed on 6/13/2018
Case Name: Holmes v. Becker et al
Case Number: 2:17-cv-02949-PMD-BM
Filer:
Document Number: 24(No document attached)

Docket Text:
TEXT ORDER denying [20] Motion to Strike ; denying [20] Motion to Stay. Corporate Defendant is represented by counsel, and is not attempting to proceed pro se. Plaintiff has further failed to establish in her motion that counsel is subject to disqualification at this time. Plaintiffs motion to stay is also denied. The parties are properly before the court and no basis for holding current deadlines in abeyance has been presented. Entered at the direction of Magistrate Judge Bristow Marchant on 6/13/2018.(cwhi,)

2:17-cv-02949-PMD-BM Notice has been electronically mailed to:

Mary McFarland Caskey mcaskey@hsblawfirm.com, awilloughby@hsblawfirm.com, uveguilla@hsblawfirm.com

Mary Cothonneau Eldridge meldridge@hsblawfirm.com, rballew@hsblawfirm.com

2:17-cv-02949-PMD-BM Notice will not be electronically mailed to:

Cynthia Holmes
P.O. Box 187
Sullivans Island, SC 29482

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

Appellate Case No. 2017-001717

ORDER

Respondents' motion to dismiss this appeal is granted because the underlying discovery order is not immediately appealable under section 14-3-330 of the South Carolina Code (2017). *See Patterson v. Spector Broad. Corp.*, 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985) (holding an order compelling a party to submit to discovery is interlocutory and not directly appealable).

FOR THE COURT

Columbia, South Carolina

cc:
Chalmers Carey Johnson, Esquire
Mary M Caskey, Esquire

FILED
June 27, 2018

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

Appellate Case No. 2017-001717

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Young J.

Paul E. Short, Jr. J.

J. B. Doe J.

Columbia, South Carolina

FILED
October 16, 2018

cc:
Cynthia Holmes
Chalmers Carey Johnson, Esquire
Mary M Caskey, Esquire
Julie J. Armstrong

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M. M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	C/A 2:17-2949-BHH-BM **REPORT AND RECOMMENDATION**

This action has been filed by the Plaintiff, pro se,[1] originally asserting claims pursuant to the Fair Debt Collections Practices Act (FDCPA), 15 U.S.C. § 1692, et. seq., and the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-101, et seq. Plaintiff amended her original pro se Complaint on July 3, 2018 to include additional claims. See Court Docket Nos. 30 and 33; see also Court Docket No. 31.

The Defendants Becker, Caskey and Haynsworth Sinkler Boyd, P.A., filed a motion to dismiss pursuant to Rule 12, Fed.R.Civ.P., on July 11, 2018. As the Plaintiff is proceeding pro se, a Roseboro order was entered by the Court on July 12, 2018, advising Plaintiff of the importance of a dispositive motion and of the need for her to file an adequate response. Plaintiff was specifically

[1]Plaintiff is a frequent filer of litigation in this Court. Aloe Creme Laboratories, Inc. v. Francine Co., 425 F.2d 1295, 1296 (5th Cir. 1970)[a federal court may take judicial notice of the contents of its own records].

advised that if she failed to file an adequate response, the Defendants' motion may be granted. Plaintiff thereafter filed for an extension of time to respond, which in light of Plaintiff's pro se status, was granted on August 8, 2018. The time for Plaintiff to respond to these Defendants' motion to dismiss was extended to September 13, 2018.

The remaining Defendant (Scarborough) filed a motion to dismiss on April 14, 2018, following which a second Roseboro order was entered on August 16, 2018. Plaintiff filed a motion for an extension of time to respond to Scarborough's motion to dismiss, which was granted by the Court on September 24, 2018. In that order, Plaintiff was granted to October 19, 2018 to file her responses to the pending motions to dismiss. Plaintiff thereafter filed her response to the Defendants motions, out of time, on October 23, 2018.

The Defendants' motions are now before the Court for disposition.[2]

Plaintiff's Allegations

Although Plaintiff's original Complaint was only five (5) pages (with an attached two (2) page exhibit), her Second Amended Complaint (filed on July 3, 2018) totals one hundred forty one (141) pages (a fifty-four (54) page Complaint, with eighty-seven (87) pages of attached exhibits).[3] In her Second Amended Complaint, Plaintiff cites several additional federal code sections, as well as the United States Constitution, as being the bases for her claims. Plaintiff's

[2]This case was automatically referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e), D.S.C. The Defendants have filed motions to dismiss. As these are dispositive motions, this Report and Recommendation is entered for review by the Court.

[3]Plaintiff had also filed a proposed First Amended Complaint (totaling seventy-one (71) pages, including exhibits) on June 18, 2018. That motion was mooted when Plaintiff filed a motion to amend with her proposed Second Amended Complaint on July 2, 2018. See Order (Court Docket No. 31).

Second Amended Complaint asserts twelve (12) Causes of Action against these Defendants.

Plaintiff's claims in this lawsuit arise out of a state law malpractice action Plaintiff brought against the Defendant Haynsworth Sinkler Boyd, P.A. (and associated attorneys). The Defendant Scarborough (Master in Equity for Charleston County) is alleged to have "wrongfully" issued some orders in related state law litigation arising out of that case. Plaintiff's allegations show that she had hired the Defendant law firm to represent her in a case she brought against East Cooper Community Hospital. Plaintiff lost that case, and even had a sanctions order issued against her. See also Order [Court Docket No. 27-2]. Plaintiff then filed a malpractice action against the Defendant law firm and the Defendant Becker (along with another attorney, Manton Grier), which was also decided against her and which resulted in a second award of sanctions against her. That Order also enjoined the Plaintiff from filing any other suit on her own behalf. See also Order [Court Docket No. 27-1].

Plaintiff now alleges in the instant law suit that the Defendant law firm's efforts to collect on the court ordered sanctions award is a violation of the FDCPA and the South Carolina Consumer Protection Code. Second Amended Complaint, ¶ ¶ 14-17. Further, as part of the litigation through which the Defendant law firm was attempting to levy on the sanctions imposed against the Plaintiff, some of the proceedings were referred to Judge Scarborough, and Plaintiff references two rulings made by Judge Scarborough during these proceedings as being improper and in violation of her rights: a sua sponte (Plaintiff uses the term "ex parte") order issued by Judge Scarborough on February 9, 2017, and a discovery and sanctions order issued by Judge Scarborough on June 23, 2017. Second Amended Complaint, ¶ ¶ 7, 19. See also Attorney Defendants Exhibits D and J. Plaintiff also asserts that because Scarborough is not a circuit court judge, he has no

judicial immunity, and further argues in her Complaint that the conduct of which she complains consisted of "non-judicial acts" in any event. Second Amended Complaint, ¶ ¶ 21, 23. Plaintiff alleges that the Attorney Defendants' actions with respect to the order of February 9, 2017 (which Plaintiff alleges caused Scarborough to issue the "wrongful" order) denied her her constitutional rights of access to the Courts and of free speech. Second Amended Complaint, ¶ ¶ 18, 20. Plaintiff then goes on to assert that the attorney Defendants failed to pay required fees in the state court litigation, that Scarborough had improper ex parte communications and issued improper rulings which denied Plaintiff her rightful access to the courts, and that the summary manner in which her state court litigation was handled violated her constitutional rights. Id., ¶ ¶ 24-30.

In her **First Cause of Action**, Plaintiff asserts a claim under the South Carolina Constitution seeking injunctive relief requiring the Defendants to "refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order", a copy of which is attached to the Second Amended Complaint. Id., ¶ ¶ 31-36. In her **Second Cause of Action**, Plaintiff seeks this same injunctive relief asserted as a federal constitutional claim. Id., ¶ ¶ 37-42. In her **Third Cause of Action**, Plaintiff seeks this same injunctive relief under South Carolina tort or common law. Id., ¶ ¶ 43-47. In her **Fourth Cause of Action**, Plaintiff seeks damages against the Defendants under 42 U.S.C. § 1983 for a violation of her constitutional right of access to the courts and to free speech. Id., ¶ ¶ 48-59. In her **Fifth Cause of Action**, Plaintiff seeks declaratory and injunctive relief, again pursuant to 42 U.S.C. § 1983.[4] Id., ¶ ¶ 60-73.[5] In her **Sixth Cause of Action**, Plaintiff seeks

[4]42 U.S.C. § 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." City of (continued...)

damages against the Defendants pursuant to 42 U.S.C. § 1985 for having engaged in an illegal conspiracy against her. Id., ¶ ¶ 74-88.[6] In her **Seventh Cause of Action,** Plaintiff asserts a cause of action for negligence against the Attorney Defendants, specifically with respect to correspondence sent by the Defendant Caskey on November 1, 2016 seeking payment of the judgment amount that had been entered against the Plaintiff. Id., ¶ ¶ 89-90, and Plaintiff's attached Exhibit B. In her **Eighth Cause of Action**, Plaintiff asserts "Equitable Claims" against the Attorney Defendants for falsely claiming or misrepresenting amounts of money owed. Id., ¶ ¶ 91-92. In her **Ninth Cause of Action**, Plaintiff asserts a claim under the FDCPA against the Attorney Defendants for falsely representing the character, amount, and/or legal status of the debt owed, again referencing counsel's correspondence of November 1, 2016. Id., ¶ ¶ 93-97. In her **Tenth Cause of Action**, Plaintiff asserts this same claim against the Attorney Defendants pursuant to the South Carolina Consumer Protection Code. Id., ¶ ¶ 98-102. In her **Eleventh Cause of Action**, Plaintiff asserts a claim under the SCUTPA[7] (S.C.Code Ann. § 39-5-10, et. seq.), again relating to the correspondence of November 1, 2016. Id., ¶ ¶ 103-107. Finally, in her **Twelfth Cause of Action,** Plaintiff asserts a state law

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[4](...continued)
Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

[5]Although Plaintiff indicates that she is seeking declaratory and injunctive relief in this cause of action, she then states in the last paragraph of this cause of action that she is seeking "damages and punitive damages in the an amount to be determined by a jury . . . .". . Id., ¶ 73.

[6]This cause of action also seeks attorneys fees and costs pursuant to 42 U.S.C. § 1988. Id., ¶ 88.

[7]South Carolina Unfair Trade Practices Act.

claim for civil conspiracy against all of the named Defendants. Id., ¶ ¶ 108-118. Plaintiff seeks declaratory and/or injunctive relief and monetary damages, including fees and costs. See generally, Plaintiff's Second Amended Complaint, with attached Exhibits.[8]

Discussion

The Defendants seek dismissal of all of Plaintiff's claims. When considering a Rule 12 motion to dismiss, the Court is required to accept the allegations in the pleading as true, and draw all reasonable factual inferences in favor of the party opposing the motion. The motion can be granted only if the party opposing the motion has failed to set forth sufficient factual matters to state a plausible claim for relief "on its face". Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009); see also Vogt v. Greenmarine Holding, LLC, 318 F.Supp. 2d 136, 144 (S.D.N.Y. 2004) ["[O]n a motion to dismiss, the Court does not weigh the strength of the evidence, and simply considers whether the [claim] alleges sufficient facts which, if true, would permit a reasonable fact finder to find [the party seeking dismissal of the claim] liable."]. Further, the Federal Court is also charged with liberally construing a complaint filed by a pro se litigant to allow for the development of a potentially meritorious case. See Cruz v. Beto, 405 U.S. 319 (1972); Haines v. Kerner, 404 U.S. 519 (1972).

Even so, the requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a Federal claim, nor can the

[8]In addition to the factual allegations of the Complaint, the Court may also consider as part of a review of a 12(b) motion any document that is "integral to and explicitly relied on in the complaint." Phillips v. LCI International, Inc., 190 F.3d 609, 618 (4th Cir. 1999) [In addition to the factual allegations of the Complaint, the Court may also consider as part of the review of a 12(b) motion any documents that are "integral to and explicitly relied on in the complaint"]; Olson v. Midland Funding, LLC, 578 Fed.Appx. 248, 250 (4th Cir. 2014) ["In considering a Fed.R.Civ.P. 12(b)(6) motion, a court may consider the complaint itself and any documents that are attached to it . . . ."] (internal citations omitted).

Court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Social Services, 901 F.2d 387 (4th Cir. 1990). Here, after careful review and consideration of the pleadings in this case and the arguments of the parties, and in compliance with the requirements of Rule 12 and the liberal construction given to pro se pleadings, the undersigned finds for the reasons set forth hereinbelow that the Defendants' motions should be **granted**, and that his case should be **dismissed**.

Damage Claims against the Defendant Scarborough

Initially, it is readily apparent that the Defendant Scarborough is entitled to dismissal as a party Defendant because he has immunity from suit for all actions taken in his judicial capacity. See Mireles v. Waco, 502 U.S. 9 (1991); Stump v. Sparkman, 435 U.S. 349, 351-64 (1978); Pressly v. Gregory, 831 F.2d 514, 517 (4th Cir. 1987)[a suit by South Carolina inmate against two Virginia magistrates]; see also Siegert v. Gilley, 500 U.S. 226 (1991) [immunity presents a threshold question which should be resolved before discovery is even allowed]; accord Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000)[discussing judicial immunity of United States District Judges and United States Circuit Judges].

Plaintiff's arguments for why the Defendant Scarborough is not entitled to judicial immunity are patently without merit. First, Plaintiff argues that because Scarborough is not a circuit court judge, he has no judicial immunity. However, Scarborough does not need to be a circuit court judge, or any other particular type of judge. The fact that he is a judge is sufficient. Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985)["It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions."].

Plaintiff's additional contention that Scarborough is not entitled to immunity because

the conduct of which she complains were "non-judicial acts" is also without merit. The exhibits provided[9] show that after Plaintiff lost her lawsuit against the East Cooper Community Hospital, she filed a legal malpractice lawsuit against the Defendant law firm and the Defendant Becker, which she also lost. Further, in addition to losing her malpractice case, the Court sanctioned Plaintiff in the amount of $200,000 due to her "unreasonable and ill-considered frivolous lawsuit" and her "pattern of abusing the legal process in bringing frivolous actions . . . .". See Exhibit [Court Docket No. 27-1]. As a result of her state court conduct, the Supreme Court of South Carolina also issued a separate order directing Clerks of Court in South Carolina to refuse to accept any further pro se filings from the Plaintiff that were related in any way to her East Cooper Community Hospital litigation, which included her related malpractice litigation. See Exhibit [Court Docket No. 27-3]. The malpractice Defendants then commenced supplemental proceedings to collect on the $200,000 sanction award, and on December 30, 2016, South Carolina Circuit Court Judge Roger Young referred the matter to the Defendant Judge Scarborough to handle supplementary proceedings in the case. See Exhibit [Court Docket No. 46-2]. A second State Circuit Judge, Deandra Jefferson,

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[9]In addition to the exhibits Plaintiff attached to her Complaint, the Defendants have also provided copies of numerous court orders and related documents from Plaintiff's state court proceedings, all of which may be properly considered by the Court in ruling on the motions to dismiss. See, n. 8, supra. See also Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009) [Courts "may properly take judicial notice of matters of public record"]; American Chiropractic Ass'n v. Trigon Health Care, Inc., 367 F.3d 212, 234 (4th Cir. 2002) [Court may consider evidence of which the Plaintiff has notice, relies on in framing the Complaint, or does not dispute its authenticity]; Tisdale v. South Carolina Highway Patrol, C/A No. 0:09–1009–HFF–PJG, 2009 WL 1491409, *1 n. 1 (D.S.C. May 27, 2009), aff'd 347 F. App'x 965 (4th Cir. Aug. 27, 2009); In re Katrina Canal Breaches Consolidated Litigation, No. 05–4182, 2008 WL 4185869 at * 2 (E.D.La. September 8, 2008)[noting that courts may take judicial notice of governmental websites including other courts' records]; Williams v. Long, 585 F.Supp.2d 679, 687–88 (D.Md. 2008)[noting that some courts have found postings on government web sites as inherently authentic or self-authenticating].

entered a similar order of reference to Judge Scarborough in January 2017. See Exhibit [Court Docket No. 46-4].

Both of the orders issued by Judge Scarborough (of which Plaintiff complains) were issued in his judicial capacity pursuant to these orders of reference of the case to him.[10] As such, these were not "non-judicial" actions by Judge Scarborough. Cf. Mireles, 502 U.S. at 11 [Noting that a judge is immune from liability except for "non-judicial actions, i.e., actions not taken in the judge's judicial capacity"]; King v. Myers, 973 F.2d 354, 357 (4th Cir. 1992) [whether a judge's conduct is a "judicial act" rests on "whether the function is one normally performed by a judge, and whether the parties dealt with the judge in his or her judicial capacity"]. Further, it is also clear that Judge Scarborough had jurisdiction to handle the matters before him and to issue the complained of orders. Cf. Mireles, 502 U.S. at 11 [Noting that in order for a judge not to be immune for their judicial actions, the actions taken must have been "in the complete absence of all jurisdiction"]. Finally, Judge Scarborough cannot be held liable for damages in this case just because Plaintiff disagrees with his rulings, or because she believes he otherwise acted improperly or even maliciously in the handling of her case. Stump, 435 U.S. at 356 ["A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority;

[10]It is noted that Plaintiff appealed both of Judge Scarborough's orders. Plaintiff's appeal of Judge Scarborough's order of February 9, 2017; see Exhibit [Court Docket No. 46-5]; was dismissed by the South Carolina Court of Appeals, dismissed again by the Court of Appeals on reconsideration, and then ultimately denied again by the South Carolina Supreme Court. See Exhibit [Court Docket Nos. 46-7, 46-8, and 46-10]. With respect to the order of June 23, 2017; see Exhibit [Court Docket No. 46-11]; Plaintiff appealed that order to the South Carolina Court of Appeals, which was denied as being an interlocutory appeal. See Exhibit [Court Docket No. 46-14]. Petitioner then filed a petition for rehearing, which was denied by the Court of Appeals. A remittitur was filed on October 18, 2018. https://www.charlestoncounty.org/departments/clerk-of-court/online-services.php.

rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction"].

Therefore, the Defendant Scarborough is entitled to dismissal as a party Defendant in this case.

Claims of Constitutional Violations against the Law Firm and Attorney Defendants

Plaintiff's constitutional claims against the Attorney and Law Firm Defendants asserted under 42 U.S.C. § 1983 are also subject to dismissal. Because the United States Constitution regulates only the government, not private parties, a litigant asserting a § 1983 claim that his or her constitutional rights have been violated must first establish that the challenged conduct constitutes "state action." See, e.g., Blum v. Yaretsky, 457 U.S. 991, 1002 (1982). See also, n. 4, supra. To qualify as state action, the conduct in question "must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," and "the party charged with the [conduct] must be a person who may fairly be said to be a state actor." Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982); see U. S. v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO, 941 F.2d 1292 (2d Cir.1991). Private attorneys are not government actors for purposes of § 1983 lawsuits just because they participate in court proceedings in a state judicial system. See Jackson v. State of South Carolina, 498 F.Supp. 186, 192-193 (D.S.C. 1979)[Retained attorney does not act under color law within in the meaning of §1983]. Therefore, such actions are not "under color of state law," and this purely private conduct, no matter how allegedly wrongful or injurious, is not actionable under § 1983. See Lugar v. Edmondson Oil Co., 457 U.S. at 936.

While a private individual or corporation (such as the Defendants here) can act under color of state law, his, her, or its actions must occur where the private individual or entity is "a

willful participant in joint action with the State or its agents." Dennis v. Sparks, 449 U.S. 24, 27-28 (1980). However, there are no "plausible" allegations here to suggest that these Defendants' actions were anything other than purely private conduct. Iqbal, 129 S.Ct. at 1949 [to survive a motion to dismiss, the plaintiff must set forth sufficient factual matters to state a plausible claim for relief "on its face"]. Plaintiff alleges that the law firm and attorney Defendants all engaged in a "conspiracy" with Scarborough to violate her rights, but this conclusory claim is not sufficient to state a "plausible" claim of joint action with an agent of the State to survive the Defendants' motions to dismiss. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)[While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, factual allegations must be enough to raise a right to relief above the speculative level]; Johnson v. Bank of America, No. 09-1600, 2010 WL 1542560, at *2 (D.S.C. April 16, 2010)["Mere legal conclusions [are] not entitled to a presumption of truth"]. To establish a civil conspiracy under § 1983, a Plaintiff must show that the Defendants acted jointly in concert, and that some overt act was done in furtherance of the conspiracy which resulted in the deprivation of a constitutional right. Glassman v. Arlington Cnty., 628 F.3d 140 (2010)(citing Hinkle v. City of Clarksburg, 81 F.3d 416 (4th Cir.1996)). Each member of the alleged conspiracy must have shared the same conspiratorial objective, and the factual allegations must reasonably lead to the inference that the Defendants came to a mutual understanding to try to "accomplish a common and unlawful plan." Hinkle, 81 F.3d at 421. As such, Plaintiff's allegations must be more than just "rank speculation and conjecture," especially when the actions are capable of innocent interpretation. Id. at 422; see also Frey v. City of Herculaneum, 44 F.3d at 671 ["Complaint must contain facts which state a claim as a matter of law and must not be conclusory"]. Here, however, the attorney and law firm Defendants were within their rights to

pursue collection through the state court system of the sanctions judgment that had been issued against the Plaintiff, and the Defendant Judge Scarborough was within his rights to issue orders and otherwise handle proceedings in that case. See, also, discussion, supra.

Hence, no "plausible" claim of an unlawful or improper "conspiracy" between these Defendants has been presented. See Johnson v. Holder, No. 11-2650, 2012 WL 4587355, * 1 (D.S.C. Sept. 28, 2012) ["More than labels and conclusions [are required], and a formulaic recitation of the elements of a cause of action will not do"] (quoting Twombly, 550 U.S. at 555), adopted by, 2013 WL 314753 (D.S.C. Jan. 28, 2013); Harper v. United States, 423 F.Supp. 192, 196 (D.S.C. 1976)["[W]here the claims in a complaint are insufficiently supported by factual allegations, these claims may be properly dismissed by summary dismissal"]; Marshall v. Odom, 156 F.Supp. 2d 525, 532 (D. MD. 2001)["To establish a civil conspiracy under § 1983, [the plaintiff] must present evidence that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [his] deprivation of a constitutional right."], citing Hinkle, 81 F.3d at 421; Wetherington v. Phillips, 380 F. Supp. 426, 428-429 (E.D.N.C. 1974), aff'd., 526 F.2d 591 (4th Cir. 1975)[The generalized allegations of a civil conspiracy are not sufficient to maintain a claim under § 1983].

Therefore, Plaintiff has failed to state a claim under 1983 against the law firm and attorney Defendants.[11]

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[11]It is noted that in her Sixth Cause of Action, Plaintiff asserts a separate "conspiracy" claim under 42 U.S.C. § 1985. However, Plaintiff has failed to set forth any "plausible" claim of a violation of that statute. See Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971)[Setting forth criteria for maintaining a conspiracy claim under 42 U.S.C. § 1985(3)];Simmons v. Poe, 47 F.3d 1370, 1376-1377 (4th Cir. 1995)[Same]. Specifically, Plaintiff has failed to set forth a "plausible" claim that the (continued...)

Claims for Injunctive and/or Declaratory Relief

Plaintiff also seeks to have this Court enjoin the execution of various state court orders that have be entered relating to her state court litigation. However, the Anti-Injunction Act precludes such an injunction. Section 2283 of Title 28 of the United States Code mandates that except in certain circumstances "[a] court of the United States may not grant an injunction to stay proceedings in a State court...." The Act constitutes "an absolute prohibition against any injunction of any state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions Act." Vendo Co. v. LektroVend Corp., 433 U.S. 623, 630 (1977) (plurality opinion). These three exceptions are injunctions: (1) expressly authorized by statute; (2) necessary to aid the court's jurisdiction; or (3) required to protect or effectuate the court's judgments. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146 (1988); Atlantic Coast Line R.R. Co. v. Board of Locomotive Eng'rs, 398 U.S. 281, 287-88 (1970). None of these exceptions applies here.

Moreover, to the extent Plaintiff is attempting to raise or present defenses to the decisions and rulings of the state courts through the filing of this lawsuit, she had the opportunity to present those defenses and arguments in the hearings held before the state courts, and she may not

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[11](...continued)
Defendants conspired together to deny her the equal protection of the laws, her equal privileges and immunities under the laws, or otherwise deprived her of exercising any right or privilege of a citizen of the United States. Griffin, 403 U.S. at 102. Additionally, the Supreme Court has held that in order to maintain a conspiracy claim under §1985(3), a Plaintiff must show that the alleged conspiracy was motivated by "some racial, or perhaps otherwise class-based invidiously discriminatory animus." Griffin, 403 U.S. at 102; see also Trerice v. Summons, 755 F.2d 1081, 1084 (4th Cir. 1985). Plaintiff has failed to allege any facts to indicate any discriminatory motive on the part of the Defendants. Therefore, Plaintiff's Sixth Cause of Action asserting a claim under § 1985 is subject to summary dismissal. Cf. Johnson v. Flores, No. 05-1628, 2009 WL 606263, at * 6 (N.D.Cal. March 9, 2009).

re-litigate those claims now in this federal lawsuit. Hilton Head Center of South Carolina, Inc. v. Public Service Commission of South Carolina, 362 S.E.2d 176, 177 (S.C. 1987) [Under the doctrine of res judicata "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit"']; see In re Dewayne, No. 18-2163, 2018 WL 4056986 at * 4 (D.S.C. Aug. 24, 2018). Under 28 U.S.C. § 1738, known as the Full Faith and Credit Statute, federal courts must give the same preclusive effect to a state court judgment as another court of that state would give. Therefore, any such claims are subject to dismissal pursuant to the doctrine of res judicata, as the pleadings in the case at Bar and in the state court litigation show that the parties or such parties' privies[12] in this action and the state court actions are essentially the same, there is identity of the subject matter, and there was an adjudication on the merits in the state court action. Riedman Corp. v. Greenville Steel Structures, Inc., 419 S.E.2d 217, 218 (S.C. 1992) [res judicata established where there is identity of the parties, identity of the subject matter, and there was an adjudication of the issue in the former suit]. Plaintiff is also barred by the doctrine of collateral estoppel "from re-litigating in a subsequent suit an issue actually and

[12]Privies are persons who have mutual or successive relationships to the same property rights and were legally represented at trial. South Carolina Dep't of Social Servs v. Winyah Nursing Homes, 320 S.E.2d 464, 468-469 (S.C.Ct.App. 1984) (citing First Nat'l Bank of Greenville v. U.S. Fidelity & Guaranty Co., 35 S.E.2d 47 (S.C. 1945); see Ex Parte Allstate Ins. Co., 528 S.E.2d 679, 681 (S.C. Ct. App. 2000) [When applied to a judgment or decree, the term "privity" means "one so identified in intent with another that he represents the same legal right"']; Briggs v. Newberry County Sch. Dist., 838 F. Supp. 232, 235 (D.S.C.1992) [Res judicata precludes a party from litigating in a second action identical claims against the same parties or their privies on which a final determination on the merits was issued]. Cf. Weinberger v. Tucker, 510 F.3d 486, (4th Cir. Dec. 20, 2007) ["Courts have held that the attorney-client relationship itself establishes privity."] (quoting Henry v Farmer City State Bank, 808 F.2d 1228, 1235 n. 6 (7th Cir. 1986) ["Even though the Bank was the only actual party to the state court mortgage foreclosure proceedings, the other defendants, as . . . and attorneys of the Bank, are in privity with the Bank for purposes of res judicata."]).

necessarily litigated and determined in a prior action". Jinks v. Richland County, 585 S.E. 2d 281, 285 (S.C. 2003); Nelson v. QHG of S.C., Inc., 608 S.E. 855, 858 (S.C. 2005) [Holding that plaintiff's claims were barred by collateral estoppel due to grant of summary judgment in prior state court action]; see also Stone v. Roadway Express, 627 S.E.2d 695, 698 (S.C. 2006) ["Collateral estoppel prevents a party from re-litigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action"] (quoting Jinks v. Richland County, supra); cf. United States v. Mendoza, 464 U.S. 154, 159 n. 4 (1984) ["Defensive use of collateral estoppel occurs when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against ... a different party"]; Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 (1979); see Meyer v. McGowen, No. 16-777, 2018 WL 4300121 at * 2 (D.S.C. Sept. 10, 2018).

Further, to the extent Plaintiff is seeking, through the filing of this lawsuit, a review of the judgements entered in her cases by the state courts, federal district courts do not hear "appeals" from state court actions. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983)[a federal district court lacks authority to review final determinations of state or local courts because such review can only be conducted by the Supreme Court of the United States under 28 U.S.C. § 1257]; Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Thus, Plaintiff may not use this civil action to challenge the determinations or rulings of the state courts. See Anderson v. Colorado, 793 F.2d 262, 263 (10th Cir. 1986) ["It is well settled that federal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review."]; Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986); see also Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir.1981); Gurley v. Superior Court of Mecklenburg County, 411 F.2d 586,

587–588 & nn. 2–4 (4th Cir. 1969) [holding that federal district courts and United States Courts of Appeals have no appellate or supervisory authority over state courts]. Therefore, to the extent that Plaintiff is requesting relief in this lawsuit that would require this Court to overrule and reverse orders and rulings made in the state courts, such a result is prohibited under the Rooker–Feldman doctrine. Davani v. Virginia Dep't. of Transp., 434 F.3d 712, 719-720 (4th Cir. 2006); see Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 293-294 (2005); Jordahl v. Democratic Party of Va., 122 F.3d 192, 201 (4th Cir. 1997).[13]

Alternatively, to the extent that the state court actions are still pending,[14] the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37, 91 (1971), and its progeny preclude this Court from interfering with ongoing proceedings, as Plaintiff can raise these issues in those state court proceedings. The Younger doctrine applies to civil proceedings that "implicate a State's interest in enforcing the orders and judgment of its courts." Sprint Commc'ns, Inc. v. Jacobs, 134 S.Ct. 584, 588 (2013)(internal quotation marks omitted). Thus, to the extent that Plaintiff is seeking injunctive or declaratory relief relating to the decisions and rulings covering the subject matter of the underlying action in state court, her claim is barred under the Younger doctrine, although the abstention principles established in Younger may not require dismissal of Plaintiffs' claims for damages. See, e.g., Lindsay v. Rushmore Loan Mgmt., Servs., LLC, No. 15-1031, 2017 WL 167832, at *1, 4 (D. Md. Jan. 17, 2017)["causes of action for damages, such as Plaintiffs', may be stayed but

[13]The Rooker-Feldman doctrine is jurisdictional, so it may be raised by the Court sua sponte. American Reliable Ins. Co. v. Stillwell, 336 F.3d 311, 316 (4th Cir. 2003).

[14]The proceedings in the judgment enforcement action filed against Plaintiff by the Defendant Law firm are apparently still proceeding. See 2007-CP-100144, https://www.charlestoncounty.org/departments/clerk-of-court/online-services.php.

not dismissed on Younger abstention grounds](citing Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 721 (1996)).

Therefore, Plaintiff's requests for injunctive and/or declaratory relief as set forth in her Second Amended Complaint are without merit, and should be dismissed.

Federal Claims under the FDCPA

Plaintiff alleges in her Complaint that the Defendant law firm's efforts to collect the state court judgment entered against her violates the Fair Debt Collections Practices Act. To establish a prima facie case for violation of the FDCPA, Plaintiff must establish: (1) she is a 'consumer' as defined by the FDCPA; (2) the debt arises out of a transaction entered primarily for personal, family, or household purposes; (3) the defendant is a 'debt collector' as defined by the FDCPA; and (4) the defendant has violated, by act or omission, a provision of the FDCPA. See Creighton v. Emporia Credit Service, Inc., 981 F. Supp. 411, 414 (E.D. Va. 1997). While attorneys can be considered "debt collectors" as that term is defined by the FDCPA under some circumstances, Plaintiff's allegations fail to provide sufficient facts to establish a plausible claim that the Defendants used "any false, deceptive, or misleading representation or means in connection with the collection of any debt," or used "unfair or unconscionable means to collect or attempt to collect any debt". 15 U.S.C. § § 1692(e) and (f).

There is nothing "false", "deceptive", "misleading" or "unfair or unconscionable" about the Defendant law firm attempting to collect a sanctions award that had been entered in its favor against the Plaintiff by a court order. Moreover, Plaintiff is not a "consumer" under the FDCPA for purposes of the debt collection attempt at issue here, nor does the "debt" arise out of "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in

which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment'. 15 U.S.C. § 1692a(5). Therefore, Plaintiff's claims asserted under the FTCPA should be dismissed. Johnson, 2012 WL 4587355, * 1 ["More than labels and conclusions [are required], and a formulaic recitation of the elements of a cause of action will not do"] (quoting Twombly, 550 U.S. at 555), adopted by, 2013 WL 314753 (D.S.C. Jan. 28, 2013); see also Dickson v. Microsoft Corp., 309 F.3d 193, 213 (4th Cir. 2002)[Plaintiff has burden of alleging facts sufficient to state all the elements of a claim].

Remaining State Law Claims

Finally, Plaintiff asserts various state law claims against the Defendant law firm and Attorneys. See generally, Plaintiff's First, Third, Seventh, Eighth, Tenth, Eleventh and Twelfth Causes of Action. The law firm and attorney Defendants correctly note in their motion that if the Court dismisses Plaintiff's federal claims from this lawsuit, these pendant state law claims should all also be dismissed under United Mine Workers v. Gibbs, 383 U.S. 715 (1966), and its progeny. See In Re Conklin, 946 F.2d 306, 324 (4th Cir. 1991); Nicol v. Imagematrix, Inc., 767 F.Supp. 744, 746, 749 (E.D.Va. 1991); Mills v. Leath, 709 F.Supp. 671, 675-676 (D.S.C. 1988) [Noting that federal courts should generally decline to exercise pendant jurisdiction over remaining state law claims after dismissal of federal claims in a lawsuit]; Carnegie-Melon v. Cohill, 484 U.S. 343 (1988); Taylor v. Waters, 81 F.3d 429, 437 (4th Cir. 1996); see also Lovern v. Edwards, 190 F.3d 648, 655 (4th Cir. 1999) ["[T]he Constitution does not contemplate the federal judiciary deciding

issues of state law among non-diverse litigation"].[15]

Gibbs provides that where federal claims in a lawsuit originally filed in United States District Court are dismissed, leaving only state law causes of action, dismissal of the remaining state law claims without prejudice is appropriate in order to allow the Plaintiff to pursue and obtain a ruling as to the viability of their state law claims in a more appropriate forum. See generally, Gibbs, 383 U.S. at 726 ["Certainly, if the federal claims are dismissed before trial, ... the state claims should be dismissed as well"]; Carnegie–Mellon, 484 U.S. at 350, n. 7 ["[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine ... will point toward declining to exercise jurisdiction over the remaining state law claims."]. Here, this case is in its early stages (being before the court on motions to dismiss), and if Plaintiff's state law claims were to survive, it would be much more appropriate for those claims to be tried by the state courts.

Finally, dismissal of Plaintiff's state law claims would also not prejudice the Plaintiff, as federal law provides for tolling of statutes of limitation for state claims during the period they were pending in federal court and for thirty days afterwards. See 28 U.S.C. § 1367(d); Jinks v. Richland County, 538 U.S. 456 (2003); Hedges v. Musco, 204 F.3d 109, 123–124 (3rd Cir. 2000); Beck v. Prupis, 162 F.3d 1090, 1099–1100 (11th Cir.1998) ["a dismissal under section 1367 tolls the statute of limitations on the dismissed claims for 30 days"]. Therefore, Plaintiff would be able to refile her state claims in state court, if she chooses to do so, assuming of course that they were

[15]All of the parties in this case are alleged to be South Carolina residents. See Second Amended Complaint, p. 2. Therefore, there is no diversity jurisdiction in this case. See 28 U.S.C. § 1332(a).

timely asserted initially through the filing of this action.

Conclusion

Based on the foregoing, it is recommended that the Defendant Mikell Scarborough be **dismissed** as a party Defendant in this case. It is further recommended that Plaintiff's federal causes of action asserting claims under the United States Constitution, 42 U.S.C. §1983, 42 U.S.C. §1985, and the FDCPA (Plaintiff's Second, Fourth, Fifth, Sixth and Ninth Causes of Action) all be **dismissed** for the reasons stated. Plaintiff's remaining state law causes of action should then be **dismissed**, without prejudice. Plaintiff may then refile her state law claims in state claims in state court, if she chooses to do so. Seabrook v. Jacobson, 153 F.3d 70, 72 (2d Cir. 1998)["Section 1367(d) ensures that the plaintiff whose supplemental jurisdiction is dismissed has at least thirty days after dismissal to refile in state court."].

The parties are referred to the Notice Page attached hereto.

Bristow Marchant
United States Magistrate Judge

October 31, 2018
Charleston, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M. M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	)	Civil Action No. 2:17-2949-BHH **ORDER**

This matter is before the Court upon the pro se Plaintiff's "motion for stay pending appeal and to hold all time limits in abeyance." (ECF No. 76). On October 31, 2018, United States Magistrate Judge Bristow Marchant issued a Report and Recommendation ("Report") in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.). In the Report, the Magistrate Judge recommended that the Court dismiss Defendant Mikell Scarborough as a party Defendant; dismiss Plaintiff's claims under the United States Constitution, 42 U.S.C. § 1983, 42 U.S.C. § 1985, and the Fair Debt Collection Practices Act (Plaintiff's second, fourth, fifth, sixth, and ninth causes of action); and that the Court dismiss Plaintiff's remaining state law claims without prejudice for refiling in state court if Plaintiff chooses to pursue them. (ECF No. 71.) Attached to the Report was a notice advising Plaintiff of his right to file written objections to the Report within fourteen days of being served with a copy.

On November 9, 2018, Plaintiff filed a motion for an extension of time to file objections, which the Court granted via text order, extending the time for Plaintiff to file

objections to December 13, 2018. (*See* ECF Nos. 73 and 74.) Subsequently, on November 16, 2018, Plaintiff filed the instant "motion for stay pending appeal and to hold all time limits in abeyance." Defendants filed responses in opposition to Plaintiff's motion, and the matter is ripe for review.

In her motion, Plaintiff asks that the Court stay this matter pending resolution of the notice of appeal she filed on October 22, 2018, appealing a decision by the prior judge assigned to this case, the Honorable P. Michael Duffy, denying her Rule 59(e) motion for reconsideration. (*See* ECF Nos. 59 and 65.) However, as Defendants point in their responses to Plaintiff's motion to stay, Plaintiff's interlocutory appeal does not require this case to be stayed. 28 U.S.C. § 1292(b). Moreover, the issues raised in Plaintiff's interlocutory appeal are distinct from the issues relevant to the Magistrate Judge's Report that is currently pending before the Court. In other words, the interlocutory appeal does not involve any controlling question of law that effects the Court's consideration of the Magistrate Judge's Report that is currently pending before the Court. In all, the Court finds no compelling reason to grant Plaintiff's motion to stay.

CONCLUSION

Accordingly, it is ordered that Plaintiff's motion to stay (ECF No. 76) is denied. In the interest of fairness, the Court will grant Plaintiff an additional brief extension of time to file her objections. Plaintiff's objections to the Magistrate Judge's Report shall be filed on or before January 2, 2019.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks
United States District Judge

December 10, 2018
Charleston, South Carolina

The Supreme Court of South Carolina

Cynthia Holmes, M.D., Petitioner,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

Appellate Case No. 2018-001968

ORDER

The *pro se* motion to have this Court determine if various *pro se* motions were properly rejected for filing is hereby stricken and dismissed under this Court's order dated December 2, 2009. The filing fee for this motion shall not be refunded. No further *pro se* motions, petitions or other documents by the petitioner shall be accepted for filing in this case.

C.J.
FOR THE COURT

Columbia, South Carolina
February 22, 2019

cc: Mary M Caskey, Esquire
Chalmers Carey Johnson, Esquire
Ms. Cynthia Holmes

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M.M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	)	Civil Action No. 2:17-2949-BHH **ORDER**

This matter is before the Court upon Plaintiff Cynthia Holmes ("Holmes" or "Plaintiff") pro se complaint against Defendants James Y. Becker ("Becker"); M.M. Caskey ("Caskey"); Haynsworth Sinkler Boyd, P.A. ("HSB"); and Mikell R. Scarborough ("Scarborough"). Plaintiff's original complaint was only five pages, but her second amended complaint consists of a 54-page complaint with 87 pages of attached exhibits, and Plaintiff alleges 12 causes of action based on, *inter alia*, the Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et seq.*, ("FDCPA"); the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-101, *et seq.*; and the United States Constitution.

On July 11, 2018, Defendants Becker, Caskey, and HSB filed a motion to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure. On August 14, 2018, Defendant Scarborough also filed a motion to dismiss pursuant to Rule 12. Plaintiff filed responses in opposition to Defendants' motions, and Defendants filed replies. In accordance with 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary

review.

On October 31, 2018, the Magistrate Judge issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court grant Defendants' motions. Plaintiff filed a motion for extension of time to file objections along with a motion to stay pending the resolution of a prior interlocutory appeal to the Fourth Circuit Court of Appeals. The Court granted Plaintiffs' motion for an extension of time, instructing her to file her objections by December 13, 2018, but denied her motion to stay on December 11, 2018. The Court also granted Plaintiff additional time to file objections, instructing her to file them on or before January 2, 2019.

On December 27, 2018, Plaintiff filed a motion for reconsideration with respect to the Court's order denying her motion to stay, and on January 2, 2019, Plaintiff filed objections to the Magistrate Judge's Report. Defendants have filed responses to Plaintiff's motion to reconsider and to Plaintiff's objections, and Plaintiff has filed a reply and supplemental affidavit. For the reasons set forth herein, the Court denies Plaintiff's motion to reconsider and finds Plaintiff's objections wholly without merit. Accordingly, the Court adopts the Magistrate Judge's Report and grants Defendants' motions to dismiss as outlined herein.

STANDARDS OF REVIEW

I. The Magistrate Judge's Report

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to

which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

II. Federal Rule of Civil Procedure 12

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As the Supreme Court held in *Bell Atl. Corp. v. Twombly*, the pleading standard set forth in Rule 8 "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. 544, 555 (2007)). Thus, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of a plaintiff's complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The "complaint must contain sufficient factual matter, accepted

as true, to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. *Id.* When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

In reviewing a Rule 12(b) motion, a court may consider, in addition to the factual allegations of the complaint, any document that is "integral to and explicitly relied on in the complaint." *Phillips v. LCI International, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999); *Olson v. Midland Funding, LLC*, 578 F. App'x 248, 250 (4th Cir. 2014) ("In considering a Fed. R. Civ. P. 12(b)(6) motion, a court may consider the complaint itself and any documents that are attached to it. . . .") (internal citations omitted).

ANALYSIS

I. Plaintiff's Motion to Reconsider

As previously outlined, Plaintiff filed a motion to reconsider the Court's December 11 order, which denied her motion to stay this action pending resolution of the interlocutory appeal she filed on October 22, 2018. In the December 11 order, the Court determined that Plaintiff's interlocutory appeal did not require a stay of this action because the appeal involves issues entirely distinct from the issues addressed in the Magistrate Judge's Report. Thus, the Court denied Plaintiff's motion to stay finding that the appeal does not involve any controlling question of law that would affect the Court's consideration of the Report. (ECF No. 80 at 2.) In her motion to reconsider, Plaintiff again asks the Court to stay this case pending resolution of her interlocutory appeal.

Ordinarily, a court may grant a motion to alter or amend pursuant to Rule 59(e) for

only three reasons: (1) to comply with an intervening change in controlling law; (2) to account for new evidence not available previously; or (3) to correct a clear error of law or prevent manifest injustice. *See Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008). Here, after review, the Court finds that Plaintiff's motion to reconsider simply rehashes the arguments the Court previously rejected, and the Court finds that Plaintiff does not point to any intervening change in controlling law or new evidence sufficient to alter the Court's prior decision. In addition, the Court does not believe that relief is warranted to correct a clear error of law or to prevent manifest injustice. Accordingly, the Court denies Plaintiff's motion to reconsider and proceeds to consider Plaintiff's objections to the Magistrate Judge's Report.

II. Plaintiff's Objections to the Magistrate Judge's Report

The allegations of Plaintiff's second amended complaint stem from a case that Plaintiff, who is a physician, initially brought against East Cooper Community Hospital ("East Cooper") in connection with the revocation of her medical staff privileges in 1997. Defendants HSB and Becker (along with another attorney employed by HSB) represented Plaintiff in that action. Plaintiff's litigation with East Cooper ultimately resulted in subsequent litigation filed by Plaintiff, including a malpractice action against HSB, Becker, and the other attorney who represented her. As a result of the aforementioned litigation, a number of orders have been entered against Plaintiff, including a circuit court order sanctioning Plaintiff and entering judgment against her in the amount of $200,000.00 and an order from the South Carolina Supreme Court finding that Plaintiff has engaged in vexatious litigation related to the revocation of her medical staff privileges at East Cooper

and specifically directing the Clerks of Court in South Carolina to refuse to accept further filings from Plaintiff in actions related in any way to the revocation of her medical staff privileges at East Cooper unless they are filed by an attorney licensed to practice law in South Carolina. (*See* ECF No. 27-2; ECF No. 46-3.)

Although the claims in Plaintiff's second amended complaint are difficult to decipher, she alleges that HSB's efforts to collect on the previously-mentioned court-ordered sanctions award against her violates the FDCPA and the South Carolina Consumer Protection Code. Plaintiff also alleges that Defendant Scarborough, Master-in-Equity for Charleston County, wrongfully issued two orders in connection with HSB's efforts to collect on the sanctions award, specifically, an alleged "ex parte" order issued by Judge Scarborough on February 9, 2017, and a discovery and sanctions order issued by Judge Scarborough on June 23, 2017. (*See* ECF No. 33 ¶¶ 7, 19; ECF Nos. 46-5 and 46-11.) In addition, Plaintiff claims, *inter alia*, that Judge Scarborough's acts were non-judicial and were without jurisdiction and that *all* Defendants have conspired against her and have denied her of various constitutional rights.

In his Report, the Magistrate Judge outlined Plaintiff's claims as follows:

> In her **First Cause of Action**, Plaintiff asserts a claim under the South Carolina Constitution seeking injunctive relief requiring the Defendants to "refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order", a copy of which is attached to the Second Amended Complaint. Id., ¶¶ 31-36. In her **Second Cause of Action**, Plaintiff seeks this same injunctive relief asserted as a federal constitutional claim. Id., ¶¶ 37-42. In her **Third Cause of Action**, Plaintiff seeks this same injunctive relief under South Carolina tort or common law. Id., ¶¶ 43-47. In her **Fourth Cause of Action**, Plaintiff seeks damages against the Defendants under 42 U.S.C. § 1983 for a violation of her constitutional right of access to the courts and to free speech. Id., ¶¶ 48-59. In her **Fifth Cause of Action**, Plaintiff seeks declaratory and injunctive relief, again pursuant to

> 42 U.S.C. § 1983. Id., ¶¶ 60-73. In her **Sixth Cause of Action**, Plaintiff seeks damages against the Defendants pursuant to 42 U.S.C. § 1985 for having engaged in an illegal conspiracy against her. Id., ¶¶ 74-88. In her **Seventh Cause of Action**, Plaintiff asserts a cause of action for negligence against the Attorney Defendants, specifically with respect to correspondence sent by the Defendant Caskey on November 1, 2016 seeking payment of the judgment amount that had been entered against the Plaintiff. Id., ¶¶ 89-90, and Plaintiff's attached Exhibit B. In her **Eighth Cause of Action**, Plaintiff asserts "Equitable Claims" against the Attorney Defendants for falsely claiming or misrepresenting amounts of money owed. Id., ¶¶ 91-92. In her **Ninth Cause of Action**, Plaintiff asserts a claim under the FDCPA against the Attorney Defendants for falsely representing the character, amount, and/or legal status of the debt owed, again referencing counsel's correspondence of November 1, 2016. Id., ¶¶ 93-97. In her **Tenth Cause of Action**, Plaintiff asserts this same claim against the Attorney Defendants pursuant to the South Carolina Consumer Protection Code. Id., ¶ ¶ 98-102. In her **Eleventh Cause of Action**, Plaintiff asserts a claim under the SCUTPA (S.C. Code Ann. § 39-5-10, et. seq.), again relating to the correspondence of November 1, 2016. Id., ¶¶ 103-107. Finally, in her **Twelfth Cause of Action**, Plaintiff asserts a state law claim for civil conspiracy against all of the named Defendants. Id., ¶¶ 108-118. Plaintiff seeks declaratory and/or injunctive relief and monetary damages, including fees and costs. See generally, Plaintiff's Second Amended Complaint, with attached Exhibits.

(ECF No. 71 at 4-6.)

Next, the Magistrate Judge proceeded to consider the merits of the parties' motions to dismiss. First, with respect to Defendant Scarborough's motion to dismiss, the Magistrate Judge agreed with Scarborough that he is entitled to judicial immunity because the actions for which he is being sued all concern judicial acts made within his jurisdiction. In so finding, the Magistrate Judge specifically rejected Plaintiff's arguments that Scarborough is not entitled to judicial immunity because he is not a circuit court judge; that Scarborough is not entitled to judicial immunity because the complained-of acts were non-judicial in nature; and that Scarborough is not entitled to judicial immunity because he lacked jurisdiction to issue the complained-of orders.

In addition, the Magistrate Judge determined that, pursuant to the *Rooker-Feldman* doctrine, Plaintiff cannot, through the filing of this lawsuit, effectively seek review of judgments entered in her previous state court cases, as lower federal courts do not hear "appeals" from state court actions. *See Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997). (noting that "jurisdiction to review such decisions lies exclusively with superior state courts and ultimately the United States Supreme Court").

In addition, with respect to the remaining Defendants' motion to dismiss, the Magistrate Judge determined: (1) that Plaintiff's constitutional claims asserted under 42 U.S.C. § 1983 are subject to dismissal because the remaining Defendants are not state actors and Plaintiff's complaint contains no plausible allegations that these Defendants' actions constituted anything other than private conduct or that these Defendants otherwise conspired with a state actor; (2) that the Anti-Injunction Act bars Plaintiff's claims for injunctive relief; (3) that any attempts by Plaintiff to raise claims that she could have presented in the earlier state court litigation fail because Plaintiff is barred by the doctrines of *res judicata* and collateral estoppel from re-litigating claims in this suit; (4) that to the extent any state court actions are still pending, the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37, 91 (1971), and its progeny bars this Court from interfering with ongoing state court proceedings; and (5) that Plaintiff fails to allege sufficient facts to state a claim under the FDCPA because there is nothing false, deceptive, or unfair about Defendants' attempt to collect on a sanctions award entered by a court, because Plaintiff is not a "consumer" under the FDCPA, and because the alleged debt does not arise out of a transaction entered primarily for person, family, or household purposes. Having found that Defendants were entitled to dismissal of all of Plaintiff's claims that arise under federal

law, the Magistrate Judge further recommended that the Court decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

Plaintiff filed 70 pages of objections, along with 28 pages of exhibits, essentially objecting to the Magistrate Judge's Report in whole. For the most part, Plaintiff's objections are rambling and largely incoherent, and she simply rehashes arguments raised in response to Defendants' motions to dismiss and rejected by the Magistrate Judge. For example, it appears that pages 37 through 70 of her objections correspond almost exactly to pages 5 through 36 of her response to Defendants' motions. (*Cf.* ECF No. 69 at 5-36 and ECF No. 87 at 37-70.) The Court finds this portion of Plaintiff's objections wholly without merit, as it simply seeks reconsideration of her entire case under the guise of objecting.[1] In addition, Plaintiff raises several irrelevant arguments in her objections regarding other litigation in which she has been involved and having little to do with the claims raised in this action, and the Court also finds these portions of Plaintiff's objections without merit. Finally, however, to the extent the Court can decipher specific objections to the Magistrate Judge's Report, this order tries to address them.

First, with respect to the Magistrate Judge's findings as to Defendant Scarborough's motion to dismiss, Plaintiff objects that Scarborough is not entitled to judicial immunity

[1] The United States District Court for the Western District of Virginia once reviewed objections to a Magistrate Judge's Report that were copied directly from prior pleadings and determined that this practice does not constitute the submission of specific, written objections and does not entitle a plaintiff to *de novo* review. *See Veney v. Astrue*, 539 F. Supp. 2d 841, 845 (W.D. Va. 2008). In *Veney*, the plaintiff's objections were "an almost verbatim copy of the 'Argument' section" of the plaintiff's brief, and the court explained that it was improper for Plaintiff "to seek re-argument and reconsideration of her entire case in the guise of objecting." *Id.* at 844; *see also Hobek v. Boeing Company*, 2017 WL 3085856, *2 (D.S.C. July 20, 2017). As the Court explained in *Veney*: "The functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks. This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act." 539 F. Supp. 2d at 845 (citation omitted); *see also United States v. Midgette*, 478 F.3d 616, 621-22 (4th Cir. 2007).

because he is not a judge. (*See* ECF No. 87 at 23). Plaintiff raised this exact argument to the Magistrate Judge, and the Court finds that the Magistrate Judge properly rejected it because in South Carolina a master-in-equity is part of the unified court system and is equivalent to a circuit court judge for purposes of judicial immunity. *See* S.C. Code Ann. §§ 15-11-10 and -15; *see also Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985) ("It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.").

Next, Plaintiff objects that Scarborough is not entitled to judicial immunity because his actions fall within an exception to judicial immunity. Again, Plaintiff raised this argument before the Magistrate Judge, and the Court finds that the Magistrate Judge properly rejected it. From a review of Plaintiff's second amended complaint, it is clear that she is suing him for judicial acts he made as the master-in-equity in connection with state court litigation in which Plaintiff was a party. Moreover, after considering the court orders and records from Plaintiff's prior state court proceedings–all matters of public record of which the Court may properly take judicial notice in considering Defendants' motions–it is clear that Scarborough issued the orders in question in his judicial capacity and not in the absence of jurisdiction, as they were made pursuant to orders of reference from the circuit court. (*See* ECF Nos. 46-2 and 46-4.) Plaintiff objects to the validity of the circuit court orders of reference, but the Court finds Plaintiff's objection wholly unsupported. Furthermore, the Court notes that, pursuant to the *Rooker-Feldman* doctrine, this Court is without jurisdiction to review the merits of state court decisions because "jurisdiction to review such decisions lies exclusively with superior state courts and ultimately the United States Supreme Court." *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997). In all, the

Court finds Plaintiff's objections as to the Magistrate Judge's findings regarding Scarborough's motion to dismiss without merit.

Plaintiff also objects to the Magistrate Judge's findings as to the remaining Defendants' motion to dismiss, again essentially rearguing her claims and making entirely conclusory and often nonsensical allegations against these Defendants. For example, Plaintiff asserts that the record reflects that Defendants all acted in concert to conspire against her and fix the outcome of the case by:

> impermissible ex parte judge shopping, impermissible ex parte contact, wrongful taking of plaintiff's property and unearned filing fees, wrongfully striking of R. 60 SCRCP and other motions, denial of right to self-representation, denial of ability to file, denial of request to be heard as per the transcript excerpt included herein, *infra*, denial of adequate for meaningful review on appeal, and/or denial of due process, and other state and Federal constitutional and statutory due process and other protections, rights, and laws.

(ECF No. 87 at 10.) Plaintiff repeats allegations like these throughout her objections but nowhere in her second amended complaint does she allege sufficient facts to state any plausible federal claims. As the Supreme Court has explained, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. 544, 555 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

Here, with respect to Plaintiff's assertion that Defendants violated her rights pursuant to 42 U.S.C. § 1983, the Court agrees with the Magistrate Judge that there are no plausible allegations in Plaintiff's complaint to suggest that the law firm Defendants' actions were anything other than purely private conduct. Moreover, with respect to Plaintiff's repeated

assertion that the law firm Defendants conspired with Scarborough to violate her rights, the Court finds Plaintiff's claims entirely conclusory and wholly without substance. (*See, e.g.*, ECF No. 87 at 13, 18-19, 21, 25-27.) Likewise, the Court finds no merit to Plaintiff's newly raised claim that Defendants somehow conspired to discriminate against her based on her gender, as Plaintiff's complaint fails to allege any facts indicating a discriminatory motive on the part of Defendants. (*See id.* at 29.) Thus, the Court agrees with the Magistrate Judge that Plaintiff has failed to allege a plausible claim under either § 1983 or § 1985.

Plaintiff next objects that the Anti-Injunction Act does not preclude the relief she seeks and/or is inapplicable, but she provides no support for this assertion, and the Court finds Plaintiff's objection without merit. (*See* ECF No. 86 at 30.) Rather, as the Magistrate Judge properly concluded, 28 U.S.C. § 2283 provides that, with certain exceptions that do not apply here, "[a] court of the United States may not grant an injunction to stay proceedings in a State court. . . ." In addition, Plaintiff also summarily asserts that the *Younger* abstention doctrine does not apply, but again, she provides no support for this assertion, and the Court again finds Plaintiff's objection without merit. (*Id.* at 34.) Instead, the Court agrees with the Magistrate Judge that to the extent that any state court actions remain pending, the *Younger* abstention doctrine bars the Court from interfering with the ongoing state court proceeding. Moreover, the Court fully agrees with the Magistrate Judge that to the extent Plaintiff seeks to re-litigate matters already decided in state court proceedings, or matters that Plaintiff had the opportunity to litigate in state court proceedings, the doctrines of *res judicata* and collateral estoppel bar such claims.

Finally, with respect to Plaintiff's claims under the FDCPA, the Court finds that that Plaintiff is not a "consumer" for purposes of the FDCPA; that Plaintiff has failed to allege

sufficient facts to show that Defendants' attempt to collect on a sanctions award is deceptive or unfair, and that this case does not involve a "debt" arising out of a transaction entered primarily for personal, family, or household purposes, notwithstanding Plaintiff's wholly unsupported objections to the contrary.

In all, the Court finds that Plaintiff's objections fail to point to any legal or factual error in the Magistrate Judge's analysis sufficient to alter the outcome of this case. Leaving aside Plaintiff's non-specific objections, or those that are impossible to decipher, the remainder of Plaintiff's objections are conclusory and lack both legal and factual support. The Court ultimately agrees with the Magistrate Judge that Plaintiff's federal claims either fail to allege sufficient factual matter to state a plausible claim for relief or are simply unavailable to Plaintiff in this action as a matter of law. The Court also agrees with the Magistrate Judge that, having determined that Plaintiff's federal claims are subject to dismissal, it is appropriate to decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. *See, e.g., Mills v. Leath*, 709 F. Supp. 671, 675-76 (D.S.C. 1988) (noting that federal courts should generally decline to exercise pendant jurisdiction over remaining state law claims after the dismissal of federal claims in a lawsuit).

CONCLUSION

Based on the foregoing, it is hereby **ORDERED** that Plaintiff's motion to reconsider (ECF No. 86) is denied; the Magistrate Judge's Report (ECF No. 71) is adopted and specifically incorporated herein; Plaintiff's objections (ECF No. 87) are overruled; Defendant Scarborough's motion to dismiss (ECF No. 46) is granted, and he is dismissed as a party from this action; the remaining Defendants' motion to dismiss (ECF No. 35) is

granted; Plaintiff's federal causes of action under § 1983, § 1985, and the FDCPA (Plaintiff's second, fourth, fifth, sixth, and ninth causes of action) are dismissed; and Plaintiff's remaining state law claims are dismissed without prejudice.

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce H. Hendricks
United States District Judge

March 28, 2019
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

C Holmes

PLAINTIFF(S)

Haynesworth Sinkler Boyd PA

DEFENDANT(S)

Submitted by: Master in Equity	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED
2019 APR -9 PM 1:03
JULIE J. ARMSTRONG
CLERK OF COURT

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☒ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☒ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

C Holmes has filed Chapter 7 Bankruptcy.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3062
Judge Code

4/2/19
Date

Information to identify the case:

Debtor 1	**Cynthia Collie Holmes** First Name Middle Name Last Name	Social Security number or ITIN **xxx-xx-4676** EIN __-_____
Debtor 2 (Spouse, if filing)	First Name Middle Name Last Name	Social Security number or ITIN ____ EIN __-_____
United States Bankruptcy Court **District of South Carolina**		Date case filed for chapter 7 **3/22/19**
Case number: **19-01644-dd**		

Official Form 309A-amd (For Individuals or Joint Debtors)

Amended Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline

(*See Reason for Amendment Below) 12/15

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**	Cynthia Collie Holmes	
2. **All other names used in the last 8 years**	aka Cynthia E Collie	
3. **Address**	PO Box 187 Sullivans Isd, SC 29482	
4. **Debtor's attorney** Name and address	None	
5. **Bankruptcy trustee** Name and address	Kevin Campbell PO Box 684 Mount Pleasant, SC 29465	Contact phone (843) 884-6874 Email: kcampbell@campbell-law-firm.com

For more information, see page 2 >

6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov.	J. Bratton Davis United States Bankruptcy Courthouse 1100 Laurel Street Columbia, SC 29201-2423	Hours open 9:00 am - 5:00 pm Contact phone: 803-765-5436 Date: 3/25/19
7. Meeting of creditors Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.	**April 17, 2019 at 02:00 PM** The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket. ***** Valid photo identification required *****	Location: **King and Queen Building, 145 King Street, Room 225, Charleston, SC 29401**
8. Presumption of abuse If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.	Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.	
9. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** **You must file a complaint:** • if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or • if you want to have a debt excepted from discharge under 11 U.S.C § 523(a)(2), (4), or (6). **You must file a motion:** • if you assert that the discharge should be denied under § 727(a)(8) or (9).	**Filing deadline:** 6/17/19
	Deadline to object to exemptions: The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.	**Filing deadline:** 30 days after the *conclusion* of the meeting of creditors
10. Proof of claim Please do not file a proof of claim unless you receive a notice to do so.	No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.	
11. Creditors with a foreign address	If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.	
13. Reason for Amendment	AMENDED TO REFLECT THE CORRECT MAILING ADDRESS FOR THE DEBTOR	
14. Miscellaneous Notice	The Voice Case Information System (VCIS) will give status information on cases filed or converted after 11/30/88. Call 1-866-222-8029. Please refer to the Court's web site at www.scb.uscourts.gov for further information. Chapter 7 cases: Property of the estate may be abandoned by the trustee at the meeting of creditors unless creditors or parties in interest object to SC LBR 6007-1.	
15. Options to Receive Notices Served by the Clerk by Email Instead of by U.S. Mail	(1) Anyone can register for the Electronic Bankruptcy Noticing program at bankruptcynotices.uscourts.gov OR (2) Debtors can register for DeBN by filing local form 'Debtor's Electronic Noticing Request (DeBN)' with the Clerk of Court. Both options are FREE and allow the clerk to quickly send you court-issued notices and orders by email. See Local Rule 9036-1.	

Notice Recipients

District/Off: 0420-2	User: greene	Date Created: 3/25/2019
Case: 19-01644-dd	Form ID: b309aamd	Total: 5

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Cynthia Collie Holmes	PO Box 187	Sullivans Isd, SC 29482		
ust	US Trustee's Office	Strom Thurmond Federal Building	1835 Assembly St.	Suite 953	Columbia, SC 29201
tr	Kevin Campbell	PO Box 684	Mount Pleasant, SC 29465		
intp	US Bankruptcy Court	Attn: Systems	1100 Laurel Street	Columbia, SC 29201-2423	
543608670	HSB, CO	PO BOX 11889	COLUMBIA, SC 29211-1889		

TOTAL: 5

The Supreme Court of South Carolina

Cynthia Holmes, M.D., Petitioner,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

Appellate Case No. 2018-001968
Lower Court Case No. 2007-CP-10-01444

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

April 22, 2019

cc:
Mary M. Caskey, Esquire
Chalmers Carey Johnson, Esquire
Cynthia Holmes
The Honorable Julie J. Armstrong
The Honorable Jenny Abbott Kitchings

FILED: May 14, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2255
(2:17-cv-02949-BHH-BM)

CYNTHIA HOLMES, a/k/a C. Holmes, a/k/a Cynthia C. Holmes, M.D.

Plaintiff - Appellant

v.

JAMES Y. BECKER, individually; M. M. CASKEY, individually; HAYNSWORTH SINKLER BOYD, P. A.; MIKELL R. SCARBOROUGH, in official capacity and, as indicated, individually re: unofficial acts

Defendants – Appellees

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

The court denies the motions to file an amended notice of appeal, to defer consideration of the instant petition for rehearing en banc, and to exceed the word

limitation for petitions for rehearing.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M.M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	)	Civil Action No. 2:17-2949-BHH **ORDER**

This matter is before the Court upon Plaintiff Cynthia Holmes ("Holmes" or "Plaintiff") motion to alter or amend the judgment entered in favor of Defendants in this case. Specifically, in an order filed on March 29, 2019, the Court adopted the Magistrate Judge's Report and overruled Plaintiff's objections to that Report, ultimately granting Defendants' motions to dismiss and dismissing any remaining state law claims without prejudice. In her instant motion to reconsider, filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Plaintiff asserts that "there is no jurisdiction for the Report and Recommendation (R&R) or its adoption" (ECF No. 100 at 2) and simply rehashes the arguments she raised in prior filings.

Reconsideration of a judgment pursuant to Rule 59(e) is an extraordinary remedy that should be used sparingly. *See Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir.1998); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008). Ordinarily, a court may grant a motion to alter or amend pursuant to Rule 59(e) for only three reasons: (1) to comply with an intervening change in controlling law; (2) to account for new evidence

not available previously; or (3) to correct a clear error of law or prevent manifest injustice. *Pac. Ins. Co.*, 148 F.3d at 403. Importantly, after review, the Court finds that Plaintiff has failed to point to any change in controlling law, any new evidence not available previously, or any clear error of law or manifest injustice. Accordingly, the Court denies Plaintiff's motion to reconsider (ECF No. 100).

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks

May 23, 2019
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The right to appeal this order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON J. Doe (CHolmes), Plaintiff, vs. Manton Grier, James Y. Becker, & Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. ; Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2007-CP-10-1444 **ORDER DENYING FILING**

FILED
2019 MAY 24 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

On April 29, 2019, Plaintiff Cynthia Holmes submitted a Motion for Recusal, Motion to Disqualify, and Motion for Sanctions. However, in December 2009 The Supreme Court of South Carolina issued an Order directing the "Clerks of Court in this state to refuse to accept further filings from Petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than Petitioner, licensed to practice law in this state." Plaintiff further attempted to file Motions in this case in 2017. The Court cited the Supreme Court's Order, and noted that "given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the Court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as any future motions, if any." Given that Plaintiff's current Motions fall within that category, after reviewing the Motions, this Court hereby denies the filing of the Motions.

And it is SO ORDERED.

The Honorable Roger M. Young, Sr.
Ninth Judicial Circuit

May 24, 2019
Charleston, South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, Cynthia Collie Holmes, Debtor.	C/A No. 19-01644-DD Adv. Pro. No. 19-80053-DD Chapter 7 **JUDGMENT**
Haynsworth Sinkler Boyd, P.A., Plaintiff, v. Cynthia Collie Holmes, Defendant.	

Judgment is awarded in favor of the defendant Cynthia Collie Holmes. The adversary complaint is dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

AND IT IS SO ORDERED.

FILED BY THE COURT
01/07/2020

UNITED STATES BANKRUPTCY COURT DISTRICT OF SOUTH CAROLINA

Entered: 01/07/2020

David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina

Notice Recipients

District/Off: 0420-2 User: admin Date Created: 1/7/2020
Case: 19-80053-dd Form ID: pdf01 Total: 7

Recipients of Notice of Electronic Filing:

ust	US Trustee	USTPRegion04.CO.ECF@usdoj.gov
tr	Kevin Campbell	kcampbell@campbell-law-firm.com
aty	Mary M. Caskey	mcaskey@hsblawfirm.com
aty	Richard R. Gleissner	rick@gleissnerlaw.com

TOTAL: 4

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	Haynsworth Sinkler Boyd, P.A.	c/o Mary M. Caskey, Esq.	PO Box 11889	Columbia, SC 29211-1889	
dft	Cynthia Collie Holmes	PO Box 187	Sullivans Isd, SC 29482		
db	Cynthia Collie Holmes	PO Box 187	Sullivans Isd, SC 29482		

TOTAL: 3

FILED: February 24, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1572
(2:17-cv-02949-BHH)

CYNTHIA HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, M.D.

Plaintiff - Appellant

v.

JAMES Y. BECKER, Individually; M. M. CASKEY, Individually; HAYNSWORTH SINKLER BOYD, P. A.; MIKELL R. SCARBOROUGH, in official capacity and, as indicated, individually re: unofficial acts

Defendants - Appellees

ORDER

Upon consideration of submissions relative to the motion for reconsideration, the court denies the motion.

Entered at the direction of the panel: Judge Keenan, Judge Diaz, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

In Re:	C/A: 2:20-234-BHH-BM
Cynthia Collie Holmes,	
Cynthia Collie Holmes,	
Appellant,	**ORDER**
vs.	
Haynesworth Sinkler Boyd, P.A.	
Appellee.	

This is a pro se appeal from the United States Bankruptcy Court for the District of South Carolina filed by Appellant Cynthia Collie Holmes. Under Local Civil Rule 73.02(B)(2) of the United States District Court for the District of South Carolina, pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge. The designated record was filed by the bankruptcy court on February 20, 2020. ECF No. 4.

The docket number for the bankruptcy court action is Case No. 19-01644-DD (Adversary Proceeding No. 19-80053-dd). The parties must use the civil action number listed above (2:20-234-BHH-BM) when they file subsequent briefs, motions, or other documents in this case.

This Court has appellate jurisdiction to hear appeals pursuant to 28 U.S.C. § 158(a) and reviews the bankruptcy court's factual findings for clear error, while reviewing its conclusions of law de novo. Kielisch v. Educ. Credit Mgmt. Corp., 258 F.3d 315, 319 (4th Cir. 2011). The parties are directed to file briefs with this standard of review in mind and according to the schedule set out below.

NOTICE OF FILING AND BRIEFING FOR BANKRUPTCY APPEAL:

Appellant shall serve and file his brief within thirty (30) days from the date this order is entered.

Appellee (Haynsworth Sinkler Boyd, P.A.) shall serve and file its brief within thirty (30) days after the service of Appellant's brief.

Appellant shall serve and file any rely brief within fourteen (14) days after the service of the Appellee's brief.

NOTICE TO APPELLANT:

Appellant is a pro se litigant. Appellant's attention is directed to the following important notice:

> **Any future filings in this case must be sent to the Clerk of Court, Post Office Box 835, Charleston, South Carolina 29402.** All documents requiring Appellant's signature shall be signed with Appellant's full legal name written in Appellant's own handwriting. Pro se litigants shall not use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this court, Appellant is directed to use letter-sized (8½ inches by 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Appellant is further instructed not to write to the edge of the paper, but to maintain one-inch margins on the top, bottom, and sides of each paper submitted.
>
> You are ordered to always keep the Clerk of Court advised **in writing (Post Office Box 835, Charleston, South Carolina 29402)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If, as a result of your failure to comply with this order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this order.** Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

TO THE CLERK OF COURT:

The Clerk of Court shall mail a copy of this order to Appellant.

The Office of the Clerk of Court shall not enter any change of address submitted by Appellant which directs that mail be sent to a person other than Appellant unless that person is an attorney admitted to practice before this court who has entered a formal appearance.

IT IS SO ORDERED.

Bristow Marchant
United States Magistrate Judge

February 25, 2020
Charleston, South Carolina

Appellant's attention is directed to the important WARNING on the following page.

p2

IMPORTANT INFORMATION—PLEASE READ CAREFULLY

WARNING TO PRO SE PARTY OR NONPARTY FILERS

All documents that you file with the court will be available to the public on the internet through PACER (Public Access to Court Electronic Records) and the court's Electronic Case Filing System. **CERTAIN *PERSONAL IDENTIFYING INFORMATION* SHOULD NOT BE INCLUDED IN OR SHOULD BE REMOVED FROM ALL DOCUMENTS *BEFORE* YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2, Fed. R. Civ. P., provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to ***ALL*** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be **"blacked out"** or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):

(a) **Social Security and Taxpayer identification numbers.** If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.
(b) **Names of Minor Children.** If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.
(c) **Dates of Birth.** If an individual's date of birth must be included in a document, the filer may include only the year of birth.
(d) **Financial Account Numbers.** If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d)(Filings Made Under Seal) and (e) (Protective Orders).

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker, Respondents.

Appellate Case No. 2019-000880

ORDER

After careful consideration, Respondents' motion to dismiss is granted. First, Appellant's appeal from the 2017 orders is not timely. *See* Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."). Second, the April 9, 2019 order and May 9, 2019 order are interlocutory and not immediately appealable. *See* S.C. Code Ann. § 14-3-330 (2017). The remittitur will be sent as required by Rule 221(b), SCACR.

Stephanie P. McDonald

FOR THE COURT

Columbia, South Carolina

cc:
Chalmers Carey Johnson, Esquire
Mary M Caskey, Esquire
Mary Cothonneau Eldridge, Esquire

FILED
March 10, 2020

United States Bankruptcy Court
District of South Carolina

Case Number: 19-01644-dd

Chapter: 7

In re:
Cynthia Collie Holmes
aka Cynthia E Collie

Entered By The Court
5/12/20

ORDER DISCHARGING DEBTOR

Filed By The Court
5/12/20
Laura A. Austin
Clerk of Court
US Bankruptcy Court

A discharge under 11 USC § 727 is granted to: Cynthia Collie Holmes.

IT IS SO ORDERED.

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION

Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Creditors cannot collect discharged debts

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

Some debts are not discharged

Examples of debts that are not discharged are:

- debts that are domestic support obligations;
- debts for most student loans;
- debts for most taxes;
- debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- some debts which the debtors did not properly list;
- debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- debts for death or personal injury caused by operating a vehicle while intoxicated.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

Most debts are discharged

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.

Notice Recipients

District/Off: 0420-2 User: admin Date Created: 5/12/2020
Case: 19-01644-dd Form ID: 164BNC Total: 17

Recipients of Notice of Electronic Filing:

ust	US Trustee's Office	USTPRegion04.CO.ECF@usdoj.gov
aty	Linda Barr	linda.k.barr@usdoj.gov
aty	Mary M. Caskey	mcaskey@hsblawfirm.com
aty	Michael H. Conrady	mconrady@campbell-law-firm.com
aty	Richard R. Gleissner	rick@gleissnerlaw.com
aty	Travis E. Menk	travis.menk@brockandscott.com

TOTAL: 6

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Cynthia Collie Holmes	PO Box 187 Sullivans Isd, SC 29482
tr	Kevin Campbell	PO Box 684 Mount Pleasant, SC 29465
cr	Bank of America, N.A.	Brock and Scott, PLLC 8757 Red Oak Blvd., Suite 150 Charlotte, NC 28217
cr	Haynsworth Sinkler Boyd, PA	c/o Mary M. Caskey, Esq. PO Box 11889 Columbia, SC 29211-1889
cr	Mary M. Caskey	c/o Mary M. Caskey, Esq. Haynsworth Sinkler Boyd, PA PO Box 11889 Columbia, SC 29211
cr	James Y. Becker	c/o Mary M. Caskey, Esq. Haynsworth Sinkler Boyd, PA PO Box 11889 Columbia, SC 29211
543663451	Capital One	PO Box 30285 Salt Lake City, UT 84130-0287
543686227	Capital One Bank (USA), N.A.	by American InfoSource as agent PO Box 71083 Charlotte, NC 28272-1083
543608670	HSB, CO	PO BOX 11889 COLUMBIA, SC 29211-1889
543663305	Haynsworth Sinkler Boyd, PA	c/o Mary M. Caskey, Esq. PO Box 11889 Columbia, SC 29211
543663450	Tenent Corp.	1445 Ross Av., Suite 1400 Dallas, TX 75202

TOTAL: 11

Notice Recipients

District/Off: 0420-2 User: admin Date Created: 5/12/2020
Case: 19-01644-dd Form ID: 164BNC Total: 17

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aty	Mary M. Caskey	mcaskey@hsblawfirm.com
aty	Michael H. Conrady	mconrady@campbell-law-firm.com
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cr	Haynsworth Sinkler Boyd, PA	c/o Mary M. Caskey, Esq.	PO Box 11889	Columbia, SC 29211-1889	
cr	Mary M. Caskey	c/o Mary M. Caskey, Esq.	Haynsworth Sinkler Boyd, PA	PO Box 11889	Columbia, SC 29211
cr	James Y. Becker	c/o Mary M. Caskey, Esq.	Haynsworth Sinkler Boyd, PA	PO Box 11889	Columbia, SC 29211
543663451	Capital One	PO Box 30285	Salt Lake City, UT 84130-0287		
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543663450	Tenent Corp.	1445 Ross Av., Suite 1400	Dallas, TX 75202		

TOTAL: 11

ELECTRONICALLY FILED - 2020 Jun 11 4:06 PM - CHARLESTON - COMMON PLEAS - CASE#2007CP1001444

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	FOR THE NINTH JUDICIAL CIRCUIT
Cynthia Holmes, M.D., Plaintiff, vs. Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker Defendants.	C/A NO: 2007-CP-10-01444

ORDER DENYING RELIEF SOUGHT BY DEFENDANT HSB

This matter came before the Court on the motion of Defendant Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A ("HSB") for an expedited order of execution against the interest of Cynthia Holmes ("Holmes") in property located at 1611 Poe Avenue, Sullivans Island, SC 29482 (the "Property"). In support of HSB's request, HSB submitted a motion and affidavit of Mary M. Caskey concerning the reasons they believe expedited relief was warranted. Defendant asserted its motion is of an "emergency nature," and that the Master-in-Equity Judge Scarborough's office informed them he would be recusing himself from the case, therefore, the motion was forwarded to this judge in her capacity as Chief Administrative Judge for Civil Purposes. For the reasons set forth below and in HSB's Motion and supporting documents, the Court DENIES HSB's Motion without a hearing pursuant section (c)(4) of the Order of the Supreme Court of South Carolina dated April 22, 2020 "Re: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447.)

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In South Carolina, a judgment cannot last more than ten years, irrespective of whether a party has filed for bankruptcy during those ten years. The ten-year enforcement period for execution on judgments as provided in S.C. Code Ann. §15-39-30 (Supp.2003), once commenced, is absolute and not subject to tolling. *Home Port Rentals, Inc. v. Moore* 359 S.C. 230, 236 (Ct. App. 2004). Such judgment is considered "utterly extinguished" ten years from the date of its entry. *Wells ex. rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19 (Ct. App. 1989).

As noted by Defendant HSB in its Emergency Motion for Expedited Order of Execution and Sale of Property and Issuing Notice of Sale, *Gordon v. Lancaster*, 425 S.C. 386 (2018), gives no flexibility as to the enforcement of judgments after the Statute of Limitations has run. The South Carolina Supreme Court granted certiorari in *Gordon* to determine whether a creditor may execute on a judgment more than ten years after its enrollment when the time period had expired during the course of litigation. *Id.* at 387. In this case, the court held a creditor could not obtain satisfaction of his judgment after its statutory period of active energy had expired. *Id.* at 386. In arriving at this decision, the court interpreted the plain meaning of the statute finding a creditor has ten years to execute on the judgment from the date of entry, a time period that cannot be renewed. *Id.* at 397. Further, the court rejected Gordon's argument that South Carolina stands in isolation compared with other jurisdictions on the issue, arguing it must remain faithful to the text of the act. *Id.* at 393. Additionally, the court cited earlier precedent, *Garrison v. Owens*, which held "a judgment lien is purely statutory, its duration as fixed by the legislature may not be prolonged by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires before the action is tried. 258 S.C. 442, 446-47 (1972).

Based on the foregoing, Defendant's Motion is DENIED.

AND IT IS SO ORDERED.

s/Jennifer B. McCoy
Circuit Court Judge

June 10, 2020
Charleston, SC

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Charleston Common Pleas

Case Caption:	C Holmes , plaintiff, et al VS Haynesworth Sinkler & Boyd P A As Successor Etc , defendant, et al
Case Number:	2007CP1001444
Type:	Order/Other

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007CP1001444

C Holmes et al
PLAINTIFF(S)

Haynesworth Sinkler & Boyd P A As Successor Etc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant filed a Motion to Reconsider with this court on June 22, 2020. For all of the reasons stated in the Court's previous Order, this court DENIES Defendants's Motion to Reconsider without the necessity of a hearing pursuant to Rule 59(f), SCRCP.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/26/2020 .

Case Party Info Protected
C Holmes for C Holmes
Chalmers Carey Johnson for C Holmes,Cynthia M D Holmes
C Holmes for C Holmes

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Jun 26 4:23 PM - CHARLESTON - COMMON PLEAS - CASE#2007CP1001444

ELECTRONICALLY FILED - 2020 Jun 26 4:23 PM - CHARLESTON - COMMON PLEAS - CASE#2007CP1001444

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Jun 26 4:23 PM - CHARLESTON - COMMON PLEAS - CASE#2007CP1001444

Charleston Common Pleas

Case Caption:	C Holmes , plaintiff, et al VS Haynesworth Sinkler & Boyd P A As Successor Etc , defendant, et al
Case Number:	2007CP1001444
Type:	Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Respondent/Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., is the Appellant/Respondent.

Appellate Case No. 2020-000968

ORDER

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A. (Haynsworth Sinkler) filed a motion to dismiss the cross-appeal filed by Cynthia Holmes. After careful consideration, the motion is granted in part. The motion is granted and Holmes's appeal of all orders except the June 10, 2020 order denying relief and the June 26, 2020 order denying the motion to reconsider are dismissed. Holmes failed to timely serve and file a notice of appeal from all of the remaining orders listed in her notice of appeal; therefore, the appeals from those orders are dismissed. The only orders remaining on appeal before this court are the June 10, 2020 order denying relief and the June 26, 2020 order denying the motion to reconsider.

FOR THE COURT

Columbia, South Carolina

cc:
Mary M Caskey, Esquire
Chalmers Carey Johnson, Esquire
Mary Cothonneau Eldridge, Esquire
Clara Elizabeth Weston, Esquire

FILED
Feb 04 2021

STATE OF SOUTH CAROLINA)
)
CHARLESTON_____COUNTY)

IN THE CIRCUIT COURT FOR THE

NINTH_____ JUDICIAL CIRCUIT

J. DOE,)
)
Plaintiff,)
)
-vs-)
)
MANTON GRIER, JAMES Y. BECKER)
and SINKLER & BOYD, P.A.,)
Defendants)

COVER SHEET FOR
CIVIL ACTIONS

Docket No. 02-CP-10-1448

The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

NATURE OF ACTION: (check one category for the main cause of action)

( ) TORT - Motor Vehicle
(x) TORT - Professional Malpractice
( ) TORT - Unfair Trade Practices, and Other Economic or Business-Related Wrongs
( ) TORT - Products Liability
( ) TORT - General or Other

( ) PCR

( ) GOV/ADM - Workers Comp.
( ) GOV/ADM - General or Other

( ) CONTRACT - Debt Collection
( ) CONTRACT - Employment
( ) CONTRACT - Construction
(x) CONTRACT - Wrongful Breach

( ) REAL PROPERTY

( ) MINOR SETTLEMENTS
( ) DOMESTICATE FOREIGN JUDGMENT
( ) OTHER (Please Describe)

FILED
2002 APR -1 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

02-CP-10-1448

JURY DEMAND (x) YES ( ) NO

Note: Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does NOT constitute a demand for or a waiver of trial by jury pursuant to applicable rules or statutes.

DOCKETING INFORMATION (Check one box.)

( ) This case is subject to arbitration (all cases with monetary damages less than $25,000 are subject to arbitration, unless otherwise exempt).

(x) This case is subject to mediation (all cases not subject to arbitration must be mediated, unless otherwise exempt).

( ) This case is exempt from ADR, and certificate is attached.

C Holmes
Signature of Plaintiff (Plaintiff's Attorney)
Address PO Box 187, Sullivan's Isl, SC 29482-0187
Telephone 843/883-3010

Date: 4/1/02

STATE OF SOUTH CAROLINA)
)
CHARLESTON COUNTY)

J. DOE,

Plaintiff,

-vs-

MANTON GRIER, JAMES Y. BECKER and SINKLER & BOYD, P.A.,

Defendants

IN THE CIRCUIT COURT FOR THE
IN THE NINTH JUDICIAL CIRCUIT
Case No.: 02-CP-10-1448

FILED
2002 APR -1 PM 4:08
JULIE ARMSTRONG
CLERK OF COURT
BY

SUMMONS

(Cause of Action for Professional Malpractice)
Jury Trial Requested

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber, at her offices, P. O. Box 187,. Sullivan's Island, SC 29482-0187, within thirty (30) days after the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid judgement by default will be rendered against you for the relief demanded in the Complaint.

C. Holmes, Pro Se
PO Box 187
Sullivan's Island, SC 29482-0187
843/883-3010

Charleston, South Carolina

1st day of April, 2002

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT CASE NO.: 02-CP-10- 1448
J. Doe, Plaintiff -vs- Manton Grier, James Y. Becker, and Sinkler & Boyd, P.A. Defendants.	COMPLAINT (Jury Trial Requested)

FILED
2002 APR -1 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, proceeding pro se, complaining of the Defendants herein, would respectfully allege and show to this Honorable Court:

1. The Plaintiff is a resident of the County of Charleston, State of South Carolina, and is respectfully requesting leave to proceed under the current caption.

2. The Defendant James Y. Becker is an attorney with Defendant Sinkler & Boyd, P.A., and upon information and belief, works out of the Charleston and Columbia offices for the Defendant Sinkler & Boyd, P.A.

3. The Defendant Manton Grier is an attorney with Defendant Sinkler & Boyd, and upon information and belief, works out of the Charleston and Columbia offices for the Defendant Sinkler & Boyd, P.A.

4. The Defendant Sinkler & Boyd, P.A., upon information and belief is a law firm with principal offices in Charleston and Columbia, SC.

5. This Honorable Court has jurisdiction of the parties and subject matter of this action and venue is proper by reason of the Plaintiff's residence in, the Defendants' office in, and the acts and omissions herein complained of having occurred in the County of Charleston, State of South Carolina.

FACTUAL ALLEGATIONS

6. East Cooper's affairs are governed by its Board of Directors ("Board of Directors" or "Board") which has the ultimate authority and responsibility for directing its affairs and operations. Licensed physicians and other health care providers may provide services to patients at East Cooper only upon being granted the requisite membership and clinical privileges by the Board upon recommendation of the Hospital's Medical Staff ("Medical Staff"), which is composed of all physicians and oral surgeons practicing at the Hospital. The Medical Staff is organized in conformity with a set of By-laws, but is subject to the ultimate authority of the Board.

7. At all times mentioned herein, Plaintiff has been a licensed, practicing medical doctor in Charleston County, South Carolina. Plaintiff graduated from the Medical University of South Carolina with an M.D. degree in May of 1988, completed internship at the Medical College of Georgia, Augusta, in July of 1990, and completed ophthalmology residency training at the Storm Eye Institute, Medical University of South Carolina in July of 1993.

8. The Plaintiff applied for and was granted temporary medical staff privileges at East Cooper in early 1994, pending final review of Plaintiff's application and credentials. On July 25, 1994, Plaintiff was formally granted initial appointment to the Medical Staff in the Associate category, with provisional status, under the provisions of Art. IV, § 3(A) of the Hospital's bylaws in effect at the time, which, upon information and belief, were similar in most, but not all, material respects to the Medical Staff By-laws adopted May 11, 1995 (the "By-laws"). At all relevant times, the Medical Staff was divided into the following

categories: Active, Associate, Courtesy, Consulting, and Honorary. (By-laws, Art. IV, §1).

9. Pursuant to Art. III, § 3.B. of the By-laws, all initial appointment to the Medical Staff shall be for a period of 12 months, and pursuant to Art. III, § 5.A, all initial appointments to any category of the Medical Staff shall serve a provisional term until submission of the provisional certification form signed by the staff member's department chief. The Plaintiff's provisional certification form was signed by the Chief of Surgery and submitted in 1995.

10. At the time of Plaintiff's initial appointment, the Associate Staff category included "physicians who are eligible for advancement to Active Staff membership and will, in the ordinary course of events and *unless he requests otherwise,* be advanced to Active Staff status after serving not more than two (2) years on the Associate Staff and each of whom meet the qualifications specified for the members of the Active Staff." (By-laws, Art. IV, §3.A. (emphasis added)). Associate Staff members could not vote on any matters represented at meetings or hold office on the Medical Staff or any department or committee. By contrast, the Active Staff "shall consist of physicians and oral surgeons who consult in connection with or attend or admit to the Hospital a minimum of twenty-four (24) patients per year." (By-laws, Art. IV, §2.A.) Active Staff members were also entitled to vote and hold office on the Medical staff or the department or committee of which he is a member." (By-laws, Art. IV, § 2.B.3),4).).

11. By November 1994, the Plaintiff recognized that the care of young children, (ages 8, 3, and 1, at the time), while building a new, general ophthalmology practice, would make it difficult to meet the patient contact requirement for the Active medical staff and,

after consultation with the hospital's medical staff coordinator, Plaintiff requested that not to be advanced to the Active Staff category, and Plaintiff further requested and was granted a change to the Courtesy Staff category defined in Art. IV, § 4(A) of the By-laws. At that time, the Courtesy Staff category permitted a physician to admit patients to the Hospital and to exercise clinical privileges but did not require a minimum number of patient contacts per year. Also, Courtesy staff members were not required to attend meetings of the Medical staff.

12. In July 1995, the Plaintiff completed the initial appointment and provisional year and was reappointed to the Courtesy staff category pursuant to Art. III, § 4(B) of the Bylaws, and the customary practices of the hospital, for a period of two (2) years. Plaintiff rightfully relied upon the provisions of the By-laws and the customary practices of the Hospital and reasonably expected that the July 1995 reappointment would be for a two year period.

13. Shortly thereafter, on July 20, 1995, the Bylaws were amended by the Board of Directors of the Hospital to require that Courtesy staff members have Active staff privileges at another local hospital. Plaintiff did not attend any meetings of the Medical Staff in which this change was discussed or approved, and, upon information and belief, no notice of the change was ever sent to Courtesy staff members affected by this change in the By-laws.

14. Because Plaintiff was content with Courtesy Staff category and with the size and nature of the medical practice, and in reliance upon the By-laws in effect at the time of the July 1995 reappointment to the Medical Staff, specifically the prerogatives of the

Courtesy Staff category, Plaintiff elected to confine the medical practice to the Sullivans Island area and the Hospital. Plaintiff did not seek Active staff status at East Cooper, nor did she seek to expand her medical practice in an effort to meet or be able to meet the 24 patient contact requirement for the Active Staff category.

15. In violation of the Plaintiff's rights under the By-Laws and in contravention of her reasonable expectations based upon the By-laws of a two-year reappointment, Plaintiff was asked by the Medical Staff to submit updated credentials information in November of 1995 and further requested to submit an application for reappointment to the Courtesy medical staff in April of 1996. Plaintiff was provided with a form with the application, which falsely stated that the effective date of the Bylaws change affecting Courtesy staff members was May 26, 1994. Plaintiff was misled by the false communication and erroneously believed that the July 1995 change to the Courtesy staff category may have been improper. On information and belief, other Medical Staff members were misled by this same false communication from the Hospital.

16. On April 22, 1996 the Plaintiff was advised the application for reappointment to the Courtesy medical staff could not be processed because the Plaintiff did not have privileges at another local hospital as required by Article IV, Section 4(A) of the Bylaws which, as explained above, had been amended after the Plaintiff's 1995-1997, two (2) year reappointment to the Courtesy medical staff in July of 1995.

17. Plaintiff consulted with the Medical Staff representatives and again made a request to continue Courtesy staff category through the end of the then current term. The Medical Staff denied this request and sought to impose upon Plaintiff the requirements of

the Active Staff, i.e., attending 50% of quarterly medical staff meetings and departmental meetings, and have 24 patient contacts per year."

18. Plaintiff then requested reappointment to the Medical Staff with a requirement of 12 patient contacts, but this request was denied.

In violation of the Plaintiff's rights and reasonable expectations under the Bylaws, and without following the reappointment procedures required by Article VI of the Bylaws, on August 19, 1996, the Plaintiff was advised by the Hospital President that she had been appointed to the Associate Active staff category, a category which did not exist under the Bylaws.

19. The Plaintiff requested an appeal of her appointment to the Associate Active medical staff category and subjection to the 24 patient contact requirement within one year but her request for an appeal was denied. The Plaintiff then requested an amendment to the Bylaws as suggested by the Hospital and Medical Staff representative to allow general practice ophthalmologists to maintain Active staff privileges with 12 patient contacts per year, and this request was also denied.

20. Because reappointments are routinely for two years, upon being denied all appeals, Plaintiff wanted clarification on the length of the reappointment and when the 24 patient contact requirement would be imposed. Plaintiff discussed the reappointment with Kara L. Melin, the Medical Staff Coordinator in the Medical Staff office. Melin said that Associate Staff practitioners, consistent with the Bylaws, have two years to meet the patient contact requirement. This statement was consistent with he Bylaws relating to Associate staff.

22. Plaintiff reasonably relied upon this interpretation of the Bylaws by a trusted member of the medical staff office in arranging the medical practice in the following months.

23. During the period of the Plaintiff's appointment, the Plaintiff leased office space from Durst & Durst Physicians, P.A. at the Durst Family Practice building located on Sullivan's Island pursuant to a Lease and Administrative Services Agreement ("Lease") entered into on November 1, 1993, which provided the Plaintiff would receive patient scheduling, patient reception, and patient file maintenance, telephone services, billing, and other administrative services in consideration of rent payments.

24. In the Summer of 1994, the Hospital's then-current parent corporation, AMI, purchased the assets of Durst & Durst Physicians, P.A., undertook the operation of the practice including the services the Plaintiff received under the terms of the Lease, and assumed all other obligations to the Plaintiff under the Lease. In the Spring of 1995, Tenet purchased all AMI hospitals and medical practices, including East Cooper and Durst Family Medical Practice, and assumed all obligations to the Plaintiff under the Lease.

25. The Plaintiff paid Durst Family Medicine, and its successors AMI and Tenet a monthly fee in addition to rent payments for Yellow Pages telephone listing under the category of "Physicians & Surgeons - Ophthalmologists."

26. On or about May 15, 1996, an agent or employee of Tenet, struck the Plaintiff's name from the renewal form for the Yellow Pages telephone listing for Durst Family Medicine without knowledge or consent of the Plaintiff, causing the Plaintiff's existing Yellow Pages listing to be deleted from the July 1996 telephone book. The

deletion of the Plaintiff's Yellow Pages listing seriously compromised and hindered the Plaintiff's ability to meet the patient contact requirement improperly imposed upon the Plaintiff in violation of the Bylaws.

26. Upon information and belief, during the following year, Tenet engaged in a course of conduct intended to and which did have a detrimental impact upon the Plaintiff's practice and ability to conduct the practice and meet the patient contact requirement improperly imposed upon the Plaintiff in violation of the Bylaws by instructing its agents and employees to divert established patients of Plaintiff to physicians employed by Durst Family Medicine, misinforming potential patients who specifically called for appointments with the Plaintiff or the ophthalmologist that they had to first see one of the primary care physicians employed by Durst Family Medicine, and demanding an unreasonable and unconscionable 300% to 400% increase in the amount the Plaintiff was paying under the lease agreement for administrative services. Upon information and belief, Tenet intended to augment the medical practice of Durst Family Medicine at the expense of the Plaintiff's medical practice.

27. In October, 1996, at a Department of Surgery meeting, pursuant to complaints by other physicians, the Plaintiff learned that the Coastal Emergency Services, Inc. through its ER physicians was not using the ER call list properly. Specifically, there were some physicians who were never called when they were listed as covering ER call. Though the Plaintiff was on the call list, there was not one opportunity for a patient contact through ER call.

28. By letter dated August 19, 1997 the Hospital advised the Plaintiff that the

Chairman of the Credentials Committee, Paul Yantis, had appointed the Plaintiff to Consulting Staff category and had terminated all admitting privileges. The Hospital's action, taken without notice or any opportunity to be heard, was a violation of the Plaintiff's constitutional rights and rights under the Bylaws because the Hospital failed to follow the reappointment procedures required by Art. IV, § 2 and Art. III, § 7 of the Bylaws. The action also violated Art. VI, § 4.C of the Bylaws, which provide that the Credentials Committee has only the authority to recommend appointments and does not have the authority to summarily terminate a physician's admitting privileges.

29. Further, the Hospital allowed John Grady, M.D., an ophthalmologist in direct economic competition with the Plaintiff, to participate in the Credentials Committee meeting of August 13, 1997 at which time, upon information and belief and as set forth in minutes of the Medical Staff committee meetings, he improperly urged the committee to allow the Plaintiff only a medical (non-surgical) ophthalmology practice with referral of surgical cases to another physician with the purpose and intent of restraining and preventing the Plaintiff from practicing ophthalmology, of destroying a competing ophthalmology practice, and to financially benefit himself.

30. The Plaintiff attempted to appeal the unauthorized reduction in Medical Staff category to the Consulting Staff and the improper termination of hospital admitting privileges but on September 4, 1997 the Plaintiff was advised the letter of August 19, 1997 was in error.

31. By letter dated September 16, 1997 the Hospital advised that the Plaintiff's admitting privileges were again terminated causing irreparable damage to the Plaintiff's

reputation, interfering with ability to provide patient care, and further hindering any possibility that the Plaintiff would be able to meet the patient contact requirement within the two year time frame normally afforded to practitioners at the Hospital. The Hospital's action was in violation of Art. IX and the Fair Hearing Plan and Appellate Review Procedure of the Bylaws, which provide such action can only be taken by the Hospital's Board after exhaustion of the appeal process.

32. By letter dated October 1, 1997, the Hospital refused to allow the Plaintiff to schedule and perform surgery on an established patient. The Hospital's improper termination of the Plaintiff's admitting privileges continued until late November, 1997 causing continuing irreparable damage to the Plaintiff's reputation, patient care, and ability to meet the patient contact requirement, when the Plaintiff's hospital admitting privileges were restored pending appeal to the Board.

33. Effective December 1, 1997, Tenet changed the answering service for Durst Family Medicine and failed to advise the new service of Plaintiff's joint telephone listing with Durst Family Medicine. Tenet failed to notify the Plaintiff of the change in the answering service, and Plaintiff was left without answering services during most of December 1997.

34. Plaintiff appealed the September 24, 1997 action of the MEC, and was eventually granted a hearing before the Medical Review Committee ("MRC") of the Medical Staff. For this hearing, the Hospital, refused to produce documents, refused to produce critical witnesses for the Plaintiff including, Kara Melin and Shirley T. Thomas, who on information and belief terminated Plaintiff's Yellow Page listing. Upon information and

belief, the Hospital falsely and improperly represented to another witness that he must cooperate with the Hospital and submit an affidavit, and testify or he could be subpoenaed.

35. The unauthorized and improper actions of the MEC in reducing Plaintiff's staff category and terminating Plaintiff's admitting privileges were not overturned by the MRC; which failed to make findings of fact and include recommendations as required by the Bylaws. The Board of Directors refused to allow the Plaintiff and/or counsel to appear at the appellate hearing and refused to allow the Plaintiff or counsel to review documentation and evidence presented to the Board.

36. On information and belief, in December 1998, Defendant's agent William (Bill) Cone, while acting within the course and scope of his employment, told an established patient of Plaintiff, that the patient should not seek Plaintiff's care as an ophthalmologist. Specifically, Cone told the Plaintiff's patient, "I know who you should not see and that is Dr. J. Doe." At this time, the Plaintiff learned that in 1994 when the Plaintiff submitted an application for privileges, Cone stated that the Plaintiff "bought his/her medical education." Cone made other derogatory comments regarding Plaintiff in 1994.

37.-38. Due solely to the Hospital's improper application of the By-laws to Plaintiff, Plaintiff currently has no admitting privileges. The hospital has admitted that there is no competency, professional judgment, or other patient care issues. Plaintiff now has at least four patients who need and require surgical procedures but Plaintiff is unable to perform such procedures. The unjustified loss of admitting privileges continues to cause irreparable damage to the Plaintiff's professional reputation and medical practice.

39. The Defendants entered into a binding agreement to provide legal representation for the Plaintiff. The Plaintiff has paid over $100,000.00 to the Defendants.The Defendants materially breached their contract with the Plaintiff for legal representation. Further, on information and belief, these breaches were accompanied by dishonest, unfair, and/or improper acts.

40. The Defendants' conduct was willful, wanton and/or in reckless disregard for the Plaintiff's rights.

41. The Defendants breached the fiduciary duty owed to their client, the Plaintiff. Further, the Defendants wrongfully abandoned their client.

For a First Cause of Action Against All Defendants
(Abandonment)

42. Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

43. Defendants as attorneys for the Plaintiff wrongfully abandoned their client, the Plaintiff.

44. Plaintiff has suffered damages as a direct and proximate result of the Defendants' wrongful abandonment and is entitled to recover consequential damages in an amount to be determined at trial as well as punitive damages and the costs of this action.

For a Second Cause of Action Against All Defendants
(Breach of Fiduciary Duty)

45. Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

46. As attorneys for the Plaintiff, the Defendants wrongfully breached the fiduciary duty owed to their client, the Plaintiff.

47. Plaintiff has suffered damages as a direct and proximate result of the Defendants' wrongful breach of fiduciary duty owed to the client and is entitled to recover consequential damages in an amount to be determined at trial as well as punitive damages and the costs of this action.

For a Third Cause of Action Against All Defendants
(Breach of Contract)

48. Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

49. At all times hereinafter mentioned, the parties had entered into a binding contract to provide legal representation for the Plaintiff.

50. The Defendants breached the contract without justification.

51. As a direct and proximate result of the wrongful conduct of the Defendants, the Plaintiff has sustained substantial compensable losses including certain consequential damages, attorneys fees and costs.

52. The Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants.

For A Fourth Cause of Action Against All Defendants
(Breach of Contract Accompanied By Fraudulent Act)

53. Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

54. At all times hereinafter mentioned, the parties had entered into a binding contract to provide legal representation for the Plaintiff.

55. The Defendants without justification breached that contract with fraudulent intent.

56. The breach of contract was accompanied by bad faith, unreasonable conduct, dishonesty in fact, unfair dealing, and/or unlawful appropriation by design.

57. As a direct and proximate result of the Defendants wrongful conduct, the Plaintiff has suffered and is entitled to recover actual damages and certain consequential damages, attorneys fees, and costs.

58. The Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants.

For A Fifth Cause Of Action Against All Defendants
(Professional Malpractice)

59. Plaintiff realleges and incorporates herein by reference the foregoing allegations as well as the allegations that follow this cause of action.

60. Defendants in providing legal representation for the Plaintiff owed a duty of care to the Plaintiff.

61. Defendants wrongfully breached that duty by negligent acts and/or omissions.

62. As a direct and proximate result of the Defendants wrongful conduct, the Plaintiff has suffered and is entitled to recover actual damages and certain consequential damages, attorneys fees, and costs.

63. The Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and upon information and belief the Plaintiff is entitled to punitive damages against Defendants.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, in an amount of actual damages to be determined by the jury for punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as this Court might deem just and proper.

Respectfully submitted,

3/31/02

C. Holmes
PO Box 187
Sullivans Island,
SC 29482-0187
(843.883.3010)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO ~~04-CP-40-3492~~
C Holmes, Plaintiff, -vs- Haynsworth, Sinkler & Boyd, P A , Successor to Sinkler & Boyd, P A , Manton Grier, and James Y Becker, Defendants	)	2007-CP-10-1444 AMENDED COMPLAINT (Jury Trial Demanded – Legal Malpractice)

FILED
APR 06 2007
JULIE J ARMSTRONG
CLERK, CP & GS

FILED
2006 DEC -1 AM 8 57
CARLENA A SCOTT
C & GS

The Plaintiff complaining of the Defendants herein, would respectfully allege and show to this Honorable Court

1 The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina

2 The Defendant Haynsworth, Sinkler & Boyd, P A ("The Law Firm"), is a professional association organized under the laws of the State of South Carolina Upon information and belief, it is a successor organization to Sinkler & Boyd, P A and is engaged in the practice of law throughout the State of South Carolina

3 The Defendant Manton Grier is a citizen and resident of the County of Richland, State of South Carolina, and an attorney licensed to practice law and engaging in the practice of law in South Carolina as well as being employed by the Defendants, Haynsworth, Sinkler & Boyd, P A (The Law Firm)

4 The Defendant James Y Becker is a citizen and resident of the County of Richland, State of South Carolina, and an attorney licensed to practice law and engaging in the practice of law in South Carolina as well as being employed by the Defendants, Haynsworth, Sinkler & Boyd, P A ("The Law Firm")

5 This Honorable Court has jurisdiction of the parties and subject matter of this action

6 In January, 1994, the Plaintiff established an ophthalmology practice located in the Durst Family Medicine building on Sullivan's Island in Charleston County

7 At that time, East Cooper Regional Medical Center ("The Hospital"), located in Mt Pleasant, granted privileges to the Plaintiff incident to her medical practice on Sullivan's Island The Hospital is the only hospital in the geographic area

8 In March 1995, Tenet Healthsystems, Inc ("Tenet") purchased the Hospital and Durst Family Medicine

9 In August 1997, Tenet summarily withdrew the Plaintiff's hospital privileges without notice and in violation of its own Bylaws and in the absence of any adverse patient care issues Though counsel unrelated to the Defendants Plaintiff's privileges were restored in 1997 on an interim basis

10 In 1998, Plaintiff engaged the Law Firm on an hourly basis to represent her interests in administrative proceedings with the hospital relating to her privileges at the Hospital Plaintiff paid Defendants approximately $55,000 for this representation

Hospital did not permit the Plaintiff to practice at the Hospital such that Defendants advised Plaintiff to file suit against the Hospital

11 On or about January 20, 1999, Plaintiff employed Defendants in a claim against Tenet on a contingency fee basis with an initial deposit pain in the amount of $5,000 00 for costs Defendants advised Plaintiff that she had anti-trust claims against Tenet and that Defendant Grier was an expert in anti-trust litigation Following the termination of representation, Plaintiff learned that the Defendants had failed to name certain necessary parties to the Federal Court case who were integral to prove the anti-trust claims against Tenet

12 In May 1999, Defendants filed suit on behalf of Plaintiff in an antitrust action in the United States District Court (" Federal Court") and obtained a Temporary Injunction that restored Plaintiff's privileges at East Cooper

13 During the summer of 1999, as the Federal Court case preceded, Defendants failed to prosecute her claims against Tenet and failed to respond to Tenet's discovery requests These facts were unknown to the Plaintiff at that time As a result of Defendants' failure to respond to discovery, the Federal Court sanctioned the Plaintiff by vacating the Temporary Injunction causing her to lose privileges at the Hospital again

14 This sanction caused Plaintiff severe economic harm and adversely affected her professional reputation and practice The Plaintiff was not permitted to perform surgeries already posted to the surgery schedule because of the Defendants' failure to comply with Tenet's discovery requests

15 During 1999, Defendants erroneously invoiced Plaintiff on an hourly basis for the contingency fee claim against Tenet Plaintiff continued to pay Defendants for services

rendered in the 1998 administrative proceedings representation as well as pay for the costs and expenses associated with the Federal Court case

16 At different times, Defendants threatened to withdraw from their representation in the Federal Court case, filed a Motion to Withdraw, withdrew their Motion to Withdraw, changed the terms of the representation with Plaintiff, required a $43,000 payment in order to proceed to trial in the Federal Court case, and made numerous billing errors on invoices that resulted in great confusion and doubt about the loyalty of Defendants to adequately represent Plaintiff's interests During this time frame, Plaintiff learned that the Defendants had one or more conflicts of interest to represent her against East Cooper because the Law Firm represented East Cooper also

17 During the course of the Federal Court case, and after receiving the $43,000 payment, the Defendants failed to diligently represent the Plaintiff in various ways including failing to interview witnesses and to pursue discovery to support the causes of action they pled Defendants also failed to appeal the dismissal of the Federal Court case and they failed to appeal the sanction for failure to comply with discovery requests, which had resulted in the Plaintiff's loss of privileges at the Hospital

18 In January 2000, the Federal Court dismissed the antitrust claims against Tenet Defendants advised Plaintiff to file suit in State Court on her state law claims, but they refused to file the State Court case and directed Plaintiff to file it pro se

19 By April 2000, Defendants terminated the representation but failed to return the $43,000 that Plaintiff had paid Defendants also refused to provide an accounting for the sums paid These issues remain in dispute

20 Plaintiff subsequently retained counsel unrelated to Defendants who resolved the underlying dispute with Tenet

21 Plaintiff filed the instant suit in the Court of Common Pleas for Charleston County under Civil Action Number 2002-CP-10-1448 The Court of Common Pleas for Richland County has jurisdiction of this matter pursuant to appellate orders issued in October 2006

For a First Cause of Action Against All Defendants
(Legal Malpractice)

22 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

23 Defendants in providing legal representation for the Plaintiff owed a duty of care to the Plaintiff

24 Defendants wrongful breached that duty by negligent acts and/or omissions Specifically, Defendants filed pleadings requesting extraordinary relief, however, they were chastised in open court for lack of diligence They failed to reduce the contingency fee agreement to writing as required by the Rules of Professional Conduct They failed to

timely respond to discovery requests though expressly required to do so by order of the Court Defendants failed to adequately pursue claims made Defendants failed to adequately pursue discovery in claims made Defendants failed to depose necessary parties Defendants breached the duty of confidentiality Defendants failed to act in their client's interest Defendants abandoned their client, the Plaintiff, and failed to motion the court for permission to withdraw Defendants failed to provide advice regarding appeal and failed and refused to appeal though requested to do so Defendants failed to return monies paid in advance for trial when there was no trial Defendants failed to act as reasonable attorneys

25 Defendants by their acts or omissions breached the duty of care owed to the Plaintiff The Plaintiff had a right to and, in fact, did rely on that duty The Defendants were negligent, grossly negligent, willful, wanton, and/or reckless, including, but not limited to, the following particulars

a in failing to timely file suit,

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests,

c in taking positions adverse to their client and their client's interest,

d in negligently failing to supervise,

e in failing to keep tract of deadlines such as, but not limited to, discovery deadlines,

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances,

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility

h In direct contravention of the South Carolina Rules of Professional Conduct, and

i In such other particulars as the evidence in this case may demonstrate

26 In addition, the law firm had a duty to supervise the services, actions, and omissions of its attorneys The law firm and supervisory attorney or partner had a duty to supervise but failed to supervise, including but not limited to the following failure to supervise fee agreements to require written contingency fee agreements, to ensure diligence in filing suit, and to ensure compliance with filing deadlines The Defendants

law firm failed to exercise that degree of supervision which a reasonable law firm would have exercised in the same or similar circumstances

27 One or more Defendants breached the duty of reasonable care and supervision causing harm to the Plaintiff The Plaintiff had a right to and, in fact, did rely on that duty resulting in foreseeable damages to the Plaintiff

28 Upon information and belief, one or more Defendants had knowledge of the wrongdoing, had the means and opportunity to correct the wrongdoing, ando4r had knowledge of previous wrongdoing, yet failed to supervise and provide reasonable care and failed to disclose or act to mitigate, including, but not limited to, actions in violation of Rule 5 1 S>C> Rules of Professional Conduct, Rule 407, SCACR – responsibilities of a partner or supervisory lawyer

29 As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff has suffered foreseeable damages, has not contributed thereto, and is entitled to recover actual damages, special damages, consequential damages, attorneys' fees, costs, and expenses, all according to applicable law

30 The Defendants' actions were willful, wanton, and/or in reckless disregard for Plaintiff's rights and the Plaintiff is entitled to punitive damages against Defendants

For a Second Cause of Action Against All Defendants
(Breach of Contract)

31 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

32 Defendants by their acts or omissions breached the duty of care owed to the Plaintiff The Plaintiff had a right to and, in fact, did rely on that duty The Defendants were negligent, grossly negligent, willful, wanton, and/or reckless, including, but not limited to, the following particulars

a in failing to timely file suit,

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests,

c in taking positions adverse to their client and their client's interest,

d in negligently failing to supervise,

e in failing to keep tract of deadlines such as, but not limited to, discovery deadlines,

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances,

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility

h In direct contravention of the South Carolina Rules of Professional Conduct, and

i In such other particulars as the evidence in this case may demonstrate

33 At all times mentioned herein, the parties had entered into a binding contract for legal representation

34 The Plaintiff performed under the contract, paid the fees, and relied on the Defendants to perform as agreed The Plaintiff's reliance was justified and foreseeable The Defendants breached the contract without justification and failed to perform as agreed

35 The Defendants failed to file suit in a timely manner They requested extraordinary relief in the form of a temporary injunction, which they failed to pursue in a timely manner

36 Defendants failed to timely respond to discovery requests in direct violation of the Federal Court Order resulting in the opposing side filing a motion to compel and for dissolution of the temporary injunction, which was granted As a result, the Plaintiff was unable to perform surgeries already posted to the surgery schedule

37 Defendants failed to adequately pursue claims made, interview witnesses, and failed to make adequate discovery requests including failure to depose critical witnesses As an example Defendants failed and refused to depose the culpable competitors in the anti-trust cause of action

38 When Defendants lost the motion for summary judgment, they abandoned their client the Plaintiff, wrongfully retaining $43,000 00 which ad been paid in advance for trial Defendants violated the South Carolina Rules of Professional Conduct, including but not limited to, Rule 1 16, RPC, Rule 407, SCACR – terminating representation

39 Defendant's then drafted a state court complaint advising the Plaintiff to file it without representation Defendants' advice to file without representation adversely affected and prejudiced the case Failure to return fees paid in advance for trial adversely

affected the Plaintiff's ability to retain counsel for the State Court causes of action and also prejudiced the Plaintiff's claims

40 Defendants breached the contract and unjustifiably failed to perform the contract The Defendants failed to act as reasonable attorneys would have acted under the same or similar circumstances The Defendants' conduct, taken as a whole, evidences a pattern of lack of diligence, failure to comply with Federal Court orders, breach of fiduciary duty owed to their client, the Plaintiff, failure to act in the client's interests, failure to abide by the South Carolina Rules of Professional Responsibility, and failure to exercise that care which a reasonable attorney would have exercised in the same or similar circumstances Defendant failed and refused to comply with mandatory, Federal Court-ordered mediation to their client's substantial detriment causing the lost opportunity of mediation (including, but not limited to, it's use as a discovery tool) and, significantly, the lost opportunity to settle and avoid protracted litigation and move forward

41 As a direct and proximate result of the wrongful conduct of the Defendants, the Plaintiff has sustained substantial, foreseeable compensable losses, has not contributed thereto, and is entitled to recover actual damages, special damages, consequential damages, lost profits, costs and expenses, all according to State law

For a Third Cause of Action Against All Defendants
(Breach of Contract Accompanied By Fraudulent Act)

42 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

43 Defendants by their acts or omissions breached the duty of care owed to the Plaintiff The Plaintiff had a right to and in fact, did rely on that duty The Defendants were negligent, grossly negligent, willful, wanton, and/or reckless, including, but not limited to, the following particulars

a in failing to timely file suit,

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests,

c in taking positions adverse to their client and their client s interest,

d in negligently failing to supervise,

e in failing to keep tract of deadlines such as, but not limited to, discovery deadlines,

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances,

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility

h In direct contravention of the South Carolina Rules of Professional Conduct, and

i In such other particulars as the evidence in this case may demonstrate

44 At all times mentioned herein, the parties had entered into a binding contract for legal representation

45 The Plaintiff performed under the contract and paid fees The Plaintiff had a right to and in fact did rely on the Defendants to perform as agreed The Defendants breached the contract without justification and failed to perform as agreed all to the substantial detriment of the Plaintiff

46 The Defendants failed to file suit in a timely manner, at the same time requesting extraordinary relief in the form of a temporary injunction

47 Defendants failed to timely respond to discovery requests resulting in a motion to compel by opposing counsel and for dissolution of the temporary injunction, which was granted As a result, the Plaintiff was unable to perform surgeries already posted on the surgery schedule

48 Defendants failed to adequately pursue claims made and failed to make adequate discovery requests including failure to depose critical witnesses

49 When Defendants lost the motion for summary judgment, they abandoned their client the Plaintiff Defendants wrongfully retained $43,000 00, which had been paid in advance for trial

50 Defendants' then drafted a state court complaint advising the Plaintiff to file it without representation Defendants' advice to file without representation adversely affected and prejudiced the case

51 Failure to return fees paid in advance for trial adversely affected the Plaintiff's ability to retain counsel and also prejudiced the Plaintiff's claims

52 Defendants breached the contract and unjustifiably failed to perform the contract The Defendants failed to act as reasonable attorneys would have acted under the same or similar circumstances

53 Without justification and with fraudulent intent, Defendants breached their contract with the Plaintiff The Defendants' conduct, taken as a whole, evidences a pattern of lack of diligence, failure to comply with Federal Court orders, breach of fiduciary duty owed to their client, the Plaintiff, failure to act in the client's interests, failure to abide by the South Carolina Rules of Professional Responsibility, and failure to exercise that care which a reasonable attorney would have exercised in the same or similar circumstances Defendants failed and refused to comply with mandatory, Federal Court-ordered mediation to their client's substantial detriment causing the lost opportunity of mediation (including, but not limited to, its use as a discovery tool) and, significantly, the lost opportunity to settle and avoid protracted litigation and move forward The Defendants' conduct was willful wanton and/or in reckless disregard for the Plaintiff's interests

54 The breach of contract was accompanied by fraudulent intent relating to the breach and fraudulent act (s) of bad faith, unreasonable conduct, dishonesty in fact, unfair dealing, and/or unlawful appropriation by design

55 As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiff has suffered foreseeable damages, has not contributed thereto, and is entitled to recover actual damages, special damages, consequential damages, attorneys' fees, costs, and expenses

56 The Defendants' actions were willful, wanton, and/or in reckless disregard for Plaintiff's rights and the Plaintiff is entitled to punitive damages against Defendants

For a Fourth Cause of Action Against All Defendants
(Breach of Fiduciary Duty)

57 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

58 Defendants by their acts or omissions breached the duty of care owed to the Plaintiff The Plaintiff had a right to and, in fact, did rely on that duty The Defendants were negligent, grossly negligent, willful, wanton, and/or reckless, including, but not limited to, the following particulars

a in failing to timely file suit,

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests,

c in taking positions adverse to their client and their client's interest,

d in negligently failing to supervise,

e in failing to keep tract of deadlines such as, but not limited to discovery deadlines,

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances,

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility

h In direct contravention of the South Carolina Rules of Professional Conduct, and

i In such other particulars as the evidence in this case may demonstrate

59 As attorneys for the Plaintiff, the Defendants stood in a fiduciary relationship with the Plaintiff The Defendants owed the Plaintiff a fiduciary duty and the duty of loyalty and honesty The Plaintiff had a right to rely on the aforesaid fiduciary duty and did, in fact, rely on it, all to the Plaintiff's substantial, foreseeable detriment

60 Defendants violated the Plaintiff's trust Defendants sat on the case for a year before filing suit with claims for extraordinary relief Defendants violated the Plaintiff's trust in failing to timely file suit and in failing to timely respond to discovery requests as ordered by the Federal Court resulting in loss of the temporary injunction Defendants acted in a manner adverse to their client's interest Defendants breached the duty of confidentiality Defendants' wrongful actions prejudiced their client's litigation Defendants abandoned their client, the Plaintiff, and failed to refund $43,000 00 paid in advance for trial, which was unearned

61 The Defendants' conduct, taken as a whole, evidences a pattern of lack of diligence, failure to comply with Federal Court orders, breach of fiduciary duty owed to their client, the Plaintiff, failure to act in the client's interests, failure to abide by the South Carolina Rules of Professional Responsibility, and failure to exercise that care which a reasonable attorney would have exercised in the same or similar circumstances Defendants failed and refused to comply with mandatory, Federal Court-ordered mediation to their client's substantial detriment causing the lost opportunity of mediation (including, but not limited to, its use as a discovery tool) and, significantly, the lost opportunity to settle and avoid protracted litigation and move forward The Defendants' conduct was willful, wanton and/or in reckless disregard for the Plaintiff's interests

62 Defendants breached their fiduciary duty to their client, the Plaintiff, by failing to act in good faith and with due regard for their client's interests

63 Plaintiff has suffered foreseeable damages as a direct and proximate result of the Defendants' wrongful breach of fiduciary duty, has not contributed thereto, and is entitled to recover actual damages, special damages and consequential damages in amounts to be

determined at trial as well as punitive damages and the costs of litigation including attorneys' fees according to State law

For a Fifth Cause of Action Against All Defendants
(Unfair Trade Practices)

64 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

65 This cause of action arises under the South Carolina Unfair Trade Practices Act (SCUTPA), S C Code Ann Sections 39-5-10 *et seq* Further, under S C Code Section 30-5-20(a), the provision of any service, including professional services, constitutes commerce in the meaning of the aforesaid Act

66 On information and belief, Defendants are engaged in trade and commerce, and the facts complained of herein occurred in the ordinary course of Defendants' businesses These wrongful acts are capable of repetition and affect the public interest

67 Upholding the Rules of Professional Conduct is critical to preserving the integrity of the legal profession and enhancing public confidence in the judicial system Violation of the South Carolina Rules of Professional Responsibility affects the public interest, subjects the profession to public disdain, and lends credence to the popularly held negative public perception of the legal profession and lawyers in general Defendants breached the duty of care owed to the Plaintiff Defendants" wrongful acts andor omissions are actionable under the SCUTPA including, but not limited to, the following particulars

a in failing to timely file suit,

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests,

c in taking positions adverse to their client and their client s interest

d in negligently failing to supervise,

e in failing to keep tract of deadlines such as, but not limited to, discovery deadlines,

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances,

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility

h In direct contravention of the South Carolina Rules of Professional Conduct, and

i In such other particulars as the evidence in this case may demonstrate

68 On information and belief, Defendants knowingly and willfully engaged in unfair and/or deceptive acts and practices in the conduct of trade or commerce within the meaning of the SCUTPA, which, if unchecked, are likely to recur and which has affected, and will continue to affect, the public interest

69 On information and belief, Defendants knew or should have known, that the conduct complained of herein constituted unfair, improper, unethical, and/or deceptive acts or practices in the conduct of trade or commerce As an example defendants' failure to return unearned monies is a violation of the SCTPA

70 The Defendants materially breached their contract with the Plaintiff for legal representation in multi8ple ways including failure to adequately pursue claims and failure to provide adequate discovery for claims made As just one example, the Defendants failed to depose the culpable competitor and failed to develop the restraint of trade and unfair trade practices claims Under oath, the competitor later admitted his lack of competence in performing modern small incision cataract surgery The competitor's wrongful acts resulted in restraint of trade thereby restricting public access in this geographic area to the well-recognized superiority of modern small incision surgery and technology Small incision cataract surgery is a revolutionary advance over large incision surgery The competitor was using outdated large incision surgery requiring large incisions, almost 180 degrees, to remove the swollen and cataractous lens whole The competitor's wrongdoing adversely affected the public at large by restricting access to the most modern and safest procedures in this as well as other ways

71 As a direct and proximate result of the Defendants' violations of the SCUTPA, Plaintiff has suffered foreseeable damages, and is entitled to recover, actual damages, attorneys' fees, and costs

On information and belief, Defendants' violations of the SCUTPA were willful and knowing, and Plaintiff is entitled to recover three times actual damages, attorneys' fees and costs

72 The Defendants failed and refused to proceed and abandoned the Plaintiff They failed and refused to request permission of the court to withdraw Defendants wrongfully abandoned the Plaintiff supplying a typed copy of the complaint for State Court and advising the Plaintiff to file it *pro se* Defendants refused to meet with the Plaintiff to discuss return of money paid in advance for trial Defendants violated the South Carolina Rules of Professional Conduct, including but not limited to Rule 1 16 RPC, Rule 407 SCACR, which states Upon termination of representation a lawyer shall protect a client s interests and refund any advance payment of fee Defendants failure to return unearned monies paid in advance for trial adversely affected Plaintiff s ability to retain substitute counsel and adversely affected Plaintiff's interests

73 The Plaintiff has suffered foreseeable damages as a direct and proximate result of the Defendants wrongful abandonment has not contributed thereto, and is entitled to recover actual damages, special damages and consequential damages in amounts to be determined at trial as well as punitive damages and the costs of litigation including attorneys' fees, all according to applicable law

For a Sixth Cause of Action Against All Defendants
(Unfair Trade Practices)

74 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

75 This cause of action arises under the South Carolina Unfair Trade Practices Act (SCUTPA), S C Code Ann Sections 39-5-10 *et seq* Further under S C Code Section 39-5-20(a), the provision of any service including professional services constitutes commerce in the meaning of the aforesaid Act

76 On information and belief Defendants are engaged in trade and commerce and the facts complained of herein occurred in the ordinary course of Defendants businesses These wrongful acts are capable of repetition and affect the public interest

77 Upholding the Rules of Professional Conduct is critical to preserving the integrity of the legal profession and enhancing public confidence in the judicial system Violation of the South Carolina Rules of Professional Responsibility affects the public interest, subjects the profession to public disdain and lends credence to the popularly held negative public perception of the legal profession and lawyers in general Defendants breached the duty of care owed to the Plaintiff Defendants wrongful acts and/or omissions are actionable under the SCUTPA including but not limited to the following particulars

a in failing to timely file suit,

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests

c in taking positions adverse to their client and their client's interest

d in negligently failing to supervise

e in failing to keep track of deadlines such as but not limited to discovery deadlines

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances,

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility including, but not limited to Rule 1 1 S C Rules of Professional Conduct, Rule 407 SCACR - competence Rule 1 3, S C Rules of Professional Conduct Rule 407, SCACR - diligence Rule 1 4 S C Rules of Professional Conduct Rule 407, SCACR - communication Rule 1 5 S C Rules of Professional Conduct Rule 407 SCACR - fees Rule 1 6, S C Rules of Professional Conduct Rule 407 SCACR - confidentiality Rule 1 7, S C Rules of Professional Conduct Rule 407 SCACR - conflict of interest Rule 1 16, S C Rules of Professional Responsibility Rule 407 SCACR - terminating representation Rule 3 2, S C Rules of Professional Conduct Rule 407, SCACR - expediting litigation and/or Rule 5 1 S C Rules of Professional Conduct Rule 407 SCACR - responsibilities of a partner or supervisory lawyer

h in failing to abide by Federal Court Orders to their client s foreseeable substantial detriment

i in failing to adequately pursue claims made and failing to provide adequate discovery for claims made, such as failing to depose the culpable competitor

78 On information and belief Defendants knowingly and willfully engaged in unfair and/or deceptive acts and practices in the conduct of trade or commerce within the meaning of the SCUTPA which if unchecked are likely to recur and which has affected and will continue to affect the public interest

79 On information and belief Defendants knew or should have known that the conduct complained of herein constituted unfair, improper, unethical and/or deceptive acts or practices in the conduct of trade or commerce As an example defendants' failure to return unearned monies is a violation of the S C Rules of Professional Conduct and the SCUTPA

80 The Defendants materially breached their contract with the Plaintiff for legal representation in multiple ways including failure to adequately pursue claims and failure to provide adequate discovery for claims made As just one example the Defendants failed to depose the culpable competitor and failed to develop the restraint of trade and

unfair trade practices claims Under oath the competitor later admitted his lack of competence in performing modern small incision cataract surgery The competitor s wrongful acts resulted in restraint of trade thereby restricting public access in this geographic area to the well-recognized superiority of modern small incision surgery and technology Small incision cataract surgery is a revolutionary advance over large incision surgery The competitor was using outdated large incision surgery requiring large incisions, almost 180 degrees, to remove the swollen and cataractous lens whole The competitor s wrongdoing adversely affected the public at large by restricting access to the most modern and safest procedures in this as well as other ways

81 As a direct and proximate result of Defendants' violations of the SCUTPA, Plaintiff has suffered foreseeable damages and is entitled to recover actual damages attorneys' fees, and costs

82 On information and belief Defendants' violations of the SCUTPA were willful and knowing and Plaintiff is entitled to recover three times actual damages, attorneys fees and costs

For a Seventh Cause of Action Against All Defendants
(Civil Conspiracy)

83 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

84 Upon information and belief a combination of the individual Defendants willfully and unjustifiably conspired together to commit the breaches, torts, unethical acts, unfair and deceptive acts and other violations of duty alleged herein in order to harm Plaintiff, and Defendants engaged in overt acts to carry out their conspiracy As an example, Defendants conspired to breach their fiduciary duty and to breach their duty to return unearned monies in violation of the South Carolina Rules of Professional Conduct including but not limited to, Rule 1 16 RPC Rule 407, SCACR which states Upon termination of representation, a lawyer shall protect a client's interests and refund any advance payment of fee

85 Defendants by their acts or omissions breached the duty of care owed to the Plaintiff The Plaintiff had a right to and in fact, did rely on that duty The Defendants were negligent grossly negligent willful wanton, and/or reckless including but not limited to the following particulars

a in failing to timely file suit

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests,

c in taking positions adverse to their client and their client s interest,

d in negligently failing to supervise

e in failing to keep track of deadlines such as but not limited to discovery deadlines

f in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances

g in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility including but not limited to Rule 1 1 S C Rules of Professional Conduct Rule 407, SCACR - competence Rule 1 3 S C Rules of Professional Conduct Rule 407 SCACR - diligence Rule 1 4 S C Rules of Professional Conduct, Rule 407, SCACR - communication Rule 1 5 S C Rules of Professional Conduct Rule 407 SCACR - fees A lawyer s fee shall be reasonable and A contingent fee agreement shall be in writing Rule 1 6, S C Rules of Professional Conduct, Rule 407 SCACR - confidentiality Rule 1 7 S C Rules of Professional Conduct, Rule 407, SCACR - conflict of interest Rule 1 16 S C Rules of Professional Responsibility, Rule 407 SCACR - terminating representation Rule 3 2 S C Rules of Professional Conduct Rule 407, SCACR - expediting litigation and/or Rule 5 1, S C Rules of Professional Conduct, Rule 407, SCACR - responsibilities of a partner or supervisory lawyer

86 The Defendants' conduct, taken as a whole evidences a pattern of lack of diligence, failure to comply with Federal Court orders breach of fiduciary duty owed to their client the Plaintiff, failure to act in the client s interests failure to abide by the South Carolina Rules of Professional Responsibility and failure to exercise that care which a reasonable attorney would have exercised in the same or similar circumstances Defendants failed and refused to comply with mandatory Federal Court-ordered mediation to their client's substantial detriment causing the lost opportunity of mediation (including but not limited to, its use as a discovery tool) and further the lost opportunity to settle and avoid protracted litigation and move forward The Defendants conduct was willful, wanton, and/or in reckless disregard for the Plaintiff's interests

87 The combination was for the purpose of injuring the Plaintiff and, in fact, did foreseeably injure the Plaintiff On information and belief the concert of action was based in actual malice

88 As a direct and proximate result of Defendants conspiracy and their overt acts in connection therewith Plaintiff suffered foreseeable injury and is entitled to recover for loss insult and injury inflicted through damage to professional reputation and practice lost profits for damage to professional reputation and practice consequential and special damages, fees, attorneys' fees and costs, as well as punitive damages for actual malice all according to applicable law

For an Eighth Cause of Action Against All Defendants

(Promissory Estoppel)

89 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

90 One or more Defendants made unambiguous representations to Plaintiff upon which the Plaintiff relied The Plaintiff's reliance was reasonable This reliance was both expected and foreseeable by Defendants Failure to hold the Defendants to their promises would result in and/or sanction the fraud and/or other injustice

91 The Defendants promised to represent the Plaintiff in good faith and promised to abide by the South Carolina Rules of Professional responsibility and promised the fiduciary duty of honesty and loyalty To the Plaintiff s substantial foreseeable detriment the Defendants breached their promises The Defendants' breached their promises including but not limited to, the following a pattern of lack of diligence, failure to comply with Federal Court orders, breach of fiduciary duty owed to their client, the Plaintiff, failure to act in the client's interests failure to abide by the South Carolina Rules of Professional Responsibility, and failure to exercise that degree of care which a reasonable attorney would have exercised in the same or similar circumstances Defendants failed and refused to comply with mandatory Federal Court-ordered mediation to their client's substantial foreseeable detriment causing the lost opportunity of mediation (including but not limited to its use as a discovery tool) and further the lost opportunity to settle and avoid protracted litigation and move forward The Defendants' conduct was willful wanton and/or in reckless disregard for the Plaintiff s interests

92 As a direct and proximate result and without contributing thereto Plaintiff has suffered foreseeable consequential and special damages and is entitled to recover from the Defendants the aforesaid damages including, but not limited to, insult and injury to professional reputation and professional practice and lost profits as well as reliance damages consequential damages, special damages, punitive damages, fees, attorneys' fees, and costs, all according to applicable law

For a Ninth Cause of Action Against All Defendants
(Defamation)

93 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

94 Defendants willfully knowingly and/or recklessly published with actual and/or implied malice false and defamatory communications about the Plaintiff with and/or without innuendo and extrinsic circumstances

95 By reason of their fiduciary relationship Plaintiff had a right to rely and in fact did rely on the fiduciary duty of honesty and loyalty owed by Defendants to their client the Plaintiff Defendants knew or should have known that the defamatory communications were adverse to their client's interests and were a breach of confidentiality

Defendants knew or should have known that the Plaintiff would suffer damages as a result

96 As a direct and proximate result of Defendants wrongful acts and without contributing thereto Plaintiff has suffered damages including special damages, and is entitled to recover actual, special, and punitive damages according to applicable law

For a Tenth Cause of Action Against All Defendants
(Constructive Fraud)

97 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

98 Upon information and belief one or more Defendants knowingly made false representations to the Plaintiff Defendants knew or should have known of the falsity The false representations were material and were made with the intent that the false representation would be acted upon The Plaintiff had no knowledge of the falsity and had a right to rely upon the representation The Plaintiff reasonably relied upon the representations Defendants made false representations including but not limited to the following that Defendants and Defendant law firm had no conflict of interest that Defendants and Defendant law firm would vigorously pursue claims that Defendants and Defendant law firm would diligently file suit, timely respond, act in good faith on their client s behalf that Defendants would abide by the S C Rules of Professional Responsibility that Defendants would comply with Federal Court Orders that Defendants would deal fairly regarding client funds in general and regarding funds paid in advance for trial and that Defendants would not abandon their client Further, after abandoning their client the Plaintiff Defendants advised and falsely represented that the client should proceed in State court without representation

99 Further a constructive trust resulted from the Plaintiff's payment of $43,000 00 in advance for trial giving rise to Defendants obligation in equity to make restitution of unearned monies

100 As a direct and proximate result of Defendants wrongful acts and without contributing thereto Plaintiff has suffered damages including special damages and is entitled to recover actual consequential special, equitable and punitive damages all according to applicable law

For an Eleventh Cause of Action Against All Defendants
(Conversion)

101 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

102 Upon information and belief Defendants exercised unauthorized assumption and illegal right of ownership over the Plaintiff's goods and/or chattels to the alteration of the condition or the exclusion of the Plaintiff's ownership rights Defendants wrongfully converted

Plaintiff's property to their own use without permission including but not limited to, violation of Rule 1 16, South Carolina Rules of Professional Conduct, Rule 407, SCACR - which states Upon termination of representation a lawyer shall protect a client s interests and refund any advance payment of fee

103 Defendants wrongdoing was willful wanton and in reckless disregard for Plaintiff and Plaintiff s rights

104 As a direct and proximate result of Defendants' wrongful acts and without contributing thereto Plaintiff has suffered foreseeable damages, including special damages, and is entitled to recover actual, special consequential and punitive damages all according to applicable law

For a Twelfth Cause of Action Against All Defendants
(Negligent Misrepresentation)

105 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

106 Upon information and belief Defendants made false representations to the Plaintiff that were material

107 The false representations were made in the course of the Defendants' profession and/or business and for pecuniary gain

108 Defendants owed a fiduciary duty of care to the Plaintiff

109 Defendants breached that duty by failing to exercise due care

110 The Plaintiff justifiably relied on the Defendants' false representations all to the Plaintiff s substantial foreseeable detriment

111 Upon information and belief one or more Defendants knowingly made false representations to the Plaintiff Defendants knew or should have known of the falsity The false representations were material and were made with the intent that the false representation would be acted upon The Plaintiff had no knowledge of the falsity and had a right to rely upon the representation The Plaintiff reasonably relied upon the representations and that reliance was foreseeable Defendants made false representations including, but not limited to, the following that Defendants and Defendant law firm had no conflict of interest that Defendants and Defendant law firm would vigorously pursue claims that Defendants and Defendant law firm would diligently file suit, timely respond, act in good faith on their client s behalf, deal fairly regarding client funds, abide by the S C Rules of Professional responsibility, and exercise that degree of care which a reasonable attorney would have exercised in the same or similar circumstances Further after abandoning their client, Defendants advised and falsely represented that the Plaintiff should proceed in State court without representation adversely affecting the Plaintiff s interests

112 As a direct and proximate result of Defendants willful and wanton acts and without contributing thereto, Plaintiff has suffered foreseeable damages including special damages, and is entitled to recover actual special and punitive damages according to applicable law

For a Thirteenth Cause of Action Against All Defendants
(Negligent Supervision)

113 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

114 Upon information and belief one or more Defendants had a duty of reasonable care and supervision owed to the Plaintiff

115 One or more Defendants breached that duty of reasonable care and supervision

116 *Upon* information and belief one or more Defendants had knowledge of the wrongdoing had the means and opportunity to correct the wrongdoing, had knowledge of previous wrongdoing, yet failed to supervise and provide reasonable care and failed to disclose or act to mitigate including but not limited to violation of Rule 5 1 S C Rules of Professional Conduct Rule 407, SCACR - responsibilities of a partner or supervisory lawyer

117 In addition one or more Defendants had a duty to supervise the services actions and omissions The Defendant law firm and the partner/supervisory attorney had a duty to supervise fee agreements, to require written contingency fee agreements to ensure diligence in filing suit to ensure compliance with filing deadlines and to ensure compliance with the S C Rules of Professional Responsibility The partner and/or supervisory attorney failed to exercise that degree of care which a reasonable partner and/or supervisory attorney would have exercised in the same or similar circumstances Further the Defendant law firm failed to exercise that degree of supervision which a reasonable law firm would have exercised in the same or similar circumstances

118 As a direct and proximate result of Defendants' willful and wanton acts and without contributing thereto Plaintiff has suffered foreseeable damages, including special damages and is entitled to recover actual special and punitive damages according to applicable law

For a Fourteenth Cause of Action Against All Defendants
(Fraud and Misrepresentation)

119 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

120 Upon information and belief, Defendants knowingly made material false representations which Defendants knew were false or which were made with reckless disregard for truth or falsity

121 Upon information and belief Defendants intended for the Plaintiff to act upon the false representations

122 The Plaintiff had a right to rely on and in fact did reasonably rely on the Defendants false representations The Plaintiff was unaware that the representations were false The Plaintiff s reliance was reasonable

123 Upon information and belief one or more Defendants knowingly made false representations to the Plaintiff which they knew were false or were made in reckless disregard for truth or falsity The false representations were material and were made with the intent that the false representation would be acted upon The Plaintiff had no knowledge of the falsity and had a right to rely upon the representation The Plaintiff reasonably relied upon the representations all to the Plaintiff s substantial foreseeable detriment Defendants made false representations including, but not limited to the following that Defendants and Defendant law firm had no conflict of interest that Defendants and Defendant law firm would vigorously pursue claims that Defendants and Defendant law firm would diligently file suit timely respond act in good faith on their client s behalf, deal fairly regarding client funds abide by Federal Court Orders and abide by the S C Rules of professional Responsibility that Defendants and Defendant law firm would not abandon their client Further, after abandoning their client the Plaintiff Defendants advised and falsely represented that the client should proceed in State court without representation

124 As a direct and proximate result of Defendants' willful and wanton acts and without contributing thereto Plaintiff has suffered foreseeable damages including special damages and is entitled to recover actual special, and punitive damages

For a Fifteenth Cause of Action Against All Defendants
(Quantum Meruit)

125 Plaintiff realleges and incorporates by reference the foregoing allegations as well as the allegations that follow this cause of action

126 Defendants by their acts or omissions breached the duty of care owed to the Plaintiff The Plaintiff had a right to and in fact did reasonably rely on that duty causing the Plaintiff substantial foreseeable damages The Defendants were negligent, grossly negligent willful wanton and/or reckless including but not limited to the following particulars

a in failing to timely file suit

b in failing to timely file the motion for temporary injunction and failing to timely respond to discovery requests

c in taking positions adverse to their client and their client's interest,

d in negligently failing to supervise

e in failing to keep track of deadlines such as, but not limited to discovery deadlines

f in failing to abide by Federal Court Orders

g in failing to exercise that degree of care a reasonable attorney would have exercised under the same or similar circumstances

h in failing to abide by the requirements of applicable provisions of the South Carolina Code of Professional Responsibility including, but not limited to Rule 1 1 S C Rules of Professional Conduct, Rule 407, SCACR - competence Rule 1 3, S C Rules of Professional Conduct Rule 407 SCACR - diligence Rule 1 4 S C Rules of Professional Conduct Rule 407 SCACR - communication Rule 1 5 S C Rules of Professional Conduct, Rule 407, SCACR - fees A lawyer s fee shall be reasonable and A contingent fee agreement shall be in writing Rule 1 6, S C Rules of Professional Conduct Rule 407 SCACR - confidentiality Rule 1 7 S C Rules of Professional Conduct Rule 407 SCACR - conflict of interest Rule 1 16 S C Rules of Professional Responsibility, Rule 407, SCACR - terminating representation Rule 3 2 S C Rules of Professional Conduct Rule 407 SCACR - expediting litigation and/or Rule 5 1 S C Rules of Professional Conduct, Rule 407, SCACR - responsibilities of a partner or supervisory lawyer

127 Defendants have breached Rule 1 5 S C Rules of Professional Conduct, Rule 407, SCACR - fees A lawyer s fee shall be reasonable, and A contingent fee agreement shall be in writing Defendants have retained unreasonable fees Defendants failed and refused to meet with the Plaintiff to discuss the matter Defendants failed to comply with Rule 1 16, S C Rules of Professional Responsibility, Rule 407, SCACR, requiring return of property to which the client is entitled and refund of advance payment of fees which were unearned

128 Accordingly under Quantum Meruit Defendants would unjustly benefit from retention of unreasonable fees and unearned fees which Defendants are required by the South Carolina Rules of Professional Responsibility to return

129 As a direct and proximate result of Defendants' willful and wanton acts and without contributing thereto, Plaintiff has sustained foreseeable damages including special damages and is entitled to

recover actual special, and punitive damages all according to applicable law

WHEREFORE the Plaintiff's damages exceed the statutory jurisdictional amount in controversy and the Plaintiff prays for judgment against the Defendants jointly and severally, in an amount of actual damages special damages consequential damages attorneys fees costs, and expenses to be determined by the jury according to State law and for punitive damages in an appropriate amount to be determined by the jury according to State law and for such other and further relief as this Court might deem just and proper

Respectfully submitted

Dated 11/30/06

C. Holmes, M.D.
P.O. Box 187
Sullivans Island, SC
29482-0187
(843 883 3010)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 07-CP-10-1444
	)	
J. Doe(CHolmes),	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	)	RETURN TO DEFENDANTS' MOTION FOR SANCTIONS
	)	
	)	
	)	
	)	
	)	
	)	
	)	
Defendants.	)	
	)	

FILED
2009 SEP 21 AM 8:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The plaintiff incorporates, fully reserves, and does not waive any rights, issues, and objections pursuant to the plaintiff's Motion to Dismiss defendants' motion for sanctions which is incorporated by reference herein. See attached plaintiff's Motion to Dismiss Defendants' Motion which was filed on July 7, 2009, and which requests that all time limits be held in abeyance pending resolution of the plaintiff's Motion to Dismiss defendants' motion. Though the Motion to Dismiss was timely served, defendants failed to timely correct legal insufficiencies or provide supporting documentation. The plaintiff respectfully requests that the defendants' motion be dismissed. In the alternative, the plaintiff requests a hearing

on plaintiff's motion filed July 7, 2009, to dismiss defendants' motion for sanctions.

New evidence previously unavailable establishes that defendants were served on or about April 10, 2002. See attached affidavit of Defendant Grier dated July 30, 2009, stating that Defendant Becker "set up" file number 9976.3 to track this lawsuit. Defendant Grier's affidavit further certifies that the file was "set up" on April 10, 2002. This evidence along with the attached previously-filed affidavit of service establishes that defendants were actually served between the filing date of April 1, 2002, and April 10, 2002. The former Rule 3, SCRCP, tolled the statute of limitations upon delivery to the sheriff in this case. Defendants have not denied receiving the summons and complaint in 2002. Humphries v. Spitz, 284 S.C. 521, 327 S.E.2d 370 (1985) citing Dill-Ball Co. v. Bailey, 103 S.C. 233, 87 S.E.2d 1010 (1916). Counsel of Record Wilkerson also has actual knowledge that defendants received the summons and complaint in April, 2002. Counsel of Record Wilkerson improperly thwarted plaintiff's questions and discovery regarding service. Defendants' motion should be denied.

"Contrary to perjury by a witness or a party's failure to disclose ... where an attorney---an officer of the court---suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. ... Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice." Chewning v. Ford Motor Co., 354 S.C. 72, 82-84, 579 S.E.2d 605 (S.C. 2003). Attorney fraud deprives the litigant of the right to be heard, thwarts a full and fair hearing on the merits, and obstructs justice, and, therefore, prejudice is presumed. Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (S.C. 2003).

Just as defendants' evasion of service and bad faith affidavits regarding service establish lack of trustworthiness, the plaintiff requests that the defendants'

untimely affidavits herein be excluded for lack of trustworthiness.

Moreover, the plaintiff requests that the defendants' affidavits be excluded as untimely and improper because they were not served with the motion as required. The applicable FCPSA statute, Rule 6(d), SCRCP, Rule 7, SCRCP, Rule 9(i), SCRCP, fundamental fairness, and basic due process rights require service with the motion. Further, they were not served prior to the hearing despite notice, therefore, the plaintiff was deprived of notice and any meaningful opportunity to respond. S.C. Const. art. I, sec. 3 and 4; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const. Art. I, Sec. 10; U.S. Const. amend. V and XIV.

Defendants' motion should be dismissed because it is based upon an inapplicable statute. Pursuant to legislative intent and the original filing date in 2002, the previous FCPSA is applicable. A copy of the previous FCPSA, S.C. Code Ann. Sections 15-36-10 through 15-36-50 (2003), is attached. Defendants' motion should be dismissed as it is based upon S.C. Code Ann. Section 15-36-10 (2005) which is not applicable. Ex Parte Gregory, 663 S.E.2d 46, fn. 1 (S.C. 2008); Clegg v. Lambrecht, 2009-SC-0206.304, fn.1 (Ct. App. 2009); Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (1998). Moreover, criteria for Rule 11 sanctions are essentially the same as those for the FCPSA. In re Beard, 359 S.C. 351, 597 S.E.2d 835 (S.C. App. 2004). Also, the Act's implied limitations period precludes application of a three-year limitations period for action on the statute. In re Beard, 359 S.C. 351, 597 S.E.2d 835 (S.C. App. 2004).

The case herein is not frivolous under either statute. Applying the current statute, however, is equivalent to ex post facto law. Both State and Federal constitutions contain provisions for due process, equal protection, and mandatory prohibition against ex post facto law. S.C. Const. art. I, sec. 3 and 4; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const. Art. I, Sec. 10; U.S. Const. amend. V and XIV.

Moreover, denial of summary judgment precludes sanctions. In Whitfield, the Court of Appeals cited Hanahan v. Simpson and stated, "In that case, the Supreme Court concurred with the view 'that a party who survives pre-trial motions to dismiss and for summary judgment [is] not subject to sanctions under the Act after a trial on the surviving claims' even though that party did not prevail on those issues at the merits hearing." Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 220, 525 S.E.2d 888 (S.C. App. 1999), rehearing denied, certiorari denied, citing Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (S.C. 1997). In Whitfield, the fact that there was no formal ruling on summary judgment and no written order denying summary judgment was not dispositive. Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 525 S.E.2d 888 (S.C. App. 1999), rehearing denied, certiorari denied. In the instant case, Judge Dennis' denial of defendants' previous Motion for Summary Judgment, Judge Barber's denial of defendants' Motion to Dismiss, Judge Jefferson's unappealed denial of costs for trial preparation, multiple appellate court orders denying attorney's fees, and denial of both parties' motion for summary judgment at trial all preclude award of fees under the Act.

Significantly, subject matter jurisdiction is lacking because the movant failed to show timeliness. Defendants' motion should be dismissed for lack of subject matter jurisdiction. Pitman v. Republic Leasing Co., Inc., 351 S.C. 429, 570 S.E.2d 187 (S.C. App. 2002); In re Beard, 359 S.C. 351, 597 S.E.2d 835 (S.C. App. 2004).

Defendants' motion is internally inconsistent and therefore, waived. Defendants have filed their motion "pursuant to Rule 59, SCRCP." Rule 59, SCRCP - New Trials; Amendment of Judgments. By filing their motion "pursuant to Rule 59, SCRCP," the proceedings are not final and "the time for appeal for all parties shall be stayed." Rule 59(f), SCRCP. Where the moving party before

determination of the motion, proceeds in a manner inconsistent with the object of the motion, the motion is waived, as by making an inconsistent motion. Bridgers v. S.C. Hwy Dept., 197 S.C. 125, 14 S.E.2d 632, 633 (1941), citing 42 C.J., "Motions and Orders," Section 173, page 516. Defendants' Rule 59, SCRCP, motion means that the decision is not final, therefore, defendants cannot comply with the statutory requirement to show that the proceedings are final. Further, because defendants have included a request for relief under Rule 59, SCRCP, not authorized by the applicable statute, defendants have proceeded "in a manner inconsistent with the object of the motion." Defendants' motion should be dismissed as internally inconsistent and, therefore, waived.

In violation of Rule 6(d), SCRCP, defendants' motion is legally insufficient, unsupported, and fails for lack of evidence in the form of affidavit. Rule 6(d), SCRCP, requires that when "a motion is to be supported by affidavit, the affidavit SHALL be served with the motion." (Emphasis added.) Therefore, the motion is legally insufficient and unsupported and should be dismissed with prejudice.

In violation of Rule 7, SCRCP, defendants' motion fails to comply with even the most basic requirements of due process. It fails to state with particularity the relief sought and was unsupported by affidavit. It fails to state with particularity the grounds. It fails to state "the manner in which the other party is alleged to have acted in violation of this statute." S. C. Code Ann. Section 15-36-30 (2003). Also, defendants failed to comply with the movant's burden of proof set forth in S. C. Code Ann. Section 15-36-40 (2003). The fundamental right of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dept. of Soc. Ser. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703,705 (1997). Fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. I sec 22; Stono River Env. Prot. Assn. v. SCDHEC, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Vth or XIVth Amendment of the U.S. Constitution." Kurschner v. City of Camden Planning Commission, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). The plaintiff was prejudiced by lack of notice and a meaningful opportunity to respond. Defendants' motion is legally insufficient and should be dismissed.

Similarly, defendants' motion fails to comply with Rule 9(i), SCRCP, by failing to attach a verified copy of the account to the motion, therefore, the motion is legally insufficient and fails to comply with basic due process rights. S.C. Const. art. I, sec. 3 and 4; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const. Art. I, Sec. 10; U.S. Const. amend. V and XIV. Defendants' motion is legally insufficient and should be dismissed.

Under Section 15-36-40, the movant has the burden of proof. In particular, no affidavit in support was served with the Motion. Therefore, the Motion fails as a matter of law and should be dismissed with prejudice. Further, defendants have not met the burden of proving that "the primary purpose for which the proceedings were procured, initiated, continued, or defended was not that of securing the proper discovery, joinder of parties, or adjudication of the civil proceedings." The movant must prove that the other party acted frivolously. Father v. SCDSS, 353 S.C. 254, 578 S.E.2d 11 (S.C. 2003). The plaintiff did not act frivolously. Defendants have not proven and cannot prove the cause of action is frivolous. Without adequate evidence, defendants fail to meet their burden of proof and defendants' motion fails.

Pursuant to Section 15-36-20, the plaintiff "**MUST** be considered to have acted to secure a proper purpose as stated in item (1) of Section 15-36-10 (2003)" because the plaintiff reasonably believes that under these facts the claim is valid

under existing or developing law (emphasis added).

Moreover, pursuant to Section 15-36-20, the plaintiff "**MUST** be considered to have acted to secure a proper purpose as stated in item (1) of Section 15-36-10 (2003)" because the plaintiff relied upon the advice of Special Antitrust Counsel, sought in good faith and given after full disclosure of all facts within the plaintiff's knowledge and information which may be relevant to the antitrust causes of action (emphasis added). Sapphire Devt., LLC v. Span USA Inc., (C.A. 4 (S.C.) 2005) 120 Fed. Appx. 466, 2005 WL 226032, Unreported.

In addition, pursuant to Section 15-36-20, the plaintiff "**MUST** be considered to have acted to secure a proper purpose as stated in item (1) of Section 15-36-10 (2003)" because the plaintiff relied upon out-of-state trial counsel sought in good faith and given full disclosure of all facts within the plaintiff's knowledge and information which may be relevant to the cause of action. The plaintiff has submitted a copy of the retainer agreement for out-of-state trial counsel.

For the final factor pursuant to Section 15-36-20, the plaintiff "**MUST** be considered to have acted to secure a proper purpose as stated in item (1) of Section 15-36-10 (2003)" because the attorney of record believes in good faith that this cause of action is not intended to merely harass or injure the other party. Affidavit in opposition to defendants' motion, page four.

Opposing counsel filed in the appellate court and has just lost a similar motion for attorney's fees. Further, the appellate courts have determined that the appeals were not frivolous. Pursuant to Rule 240, SCACR, if the appeal had been frivolous, the Court of Appeals would have dismissed the appeal on that basis. In addition, untrustworthy defendants' previously filed and lost in the appellate courts another request for attorney's fees in an appeal dismissed without prejudice in which Counsel of Record Wilkerson had a subordinate swear before a notary that $1000.00 in attorney's fees were incurred when no initial briefs were even filed.

The appeal was dismissed without prejudice on a motion as interlocutory. Needless to say, the attorney's fees were denied. Defendants' affidavits herein of unreasonable, if not excessive, fees are similarly suspect. Defendants' affidavits are not timely and should be excluded. Further, Judge Jefferson has already denied attorney's fees and costs for trial preparation, defendants did not appeal, and it is the law of the case.

Likewise, the defendants' affidavits are suspect including, but not limited to, unauthorized charges such as expert fees in violation of S.C. Code Ann. Section 15-36-30(2003). The Act does not authorize any fees other than attorney's fees and court costs. For example, private investigator costs, expert fees, non-billable clerical hours, and defendants' costs are not authorized. Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (1998). Further, defendants improperly include appellate fees already denied multiple times and defendants improperly include costs for trial preparation already denied by Judge Jefferson whose denial was unappealed. In addition, defendants are contributorily negligent, failed their duty to mitigate, ignored subpoena, failed to show up for their own depositions, and deprived the plaintiff of the right to full and fair discovery. Defendants' motion should be denied.

Defendants misrepresent other suits and plaintiff makes a motion to exclude any reference to irrelevant matter. Defendants fail to disclose that defendants filed the first suit and, but for defendants' negligence and negligent abandonment, the dispute would have been resolved long ago and we would not have to be here today. Defendants drafted the complaint for the second suit and advised the plaintiff to file it ***pro se.*** The second suit was successful and should have been resolved in the first suit, but for defendants' negligence. Pursuant to South Carolina case law, the settlement agreement was signed in mitigation. Crowley v. Harvey & Battey, 327 SC 68, 488 SE2d 335 (SC 1997). The 2005 suit was filed by

other counsel of record in good faith, the claims are meritorious, the claims are pending, and the attached affidavit dated December 8, 2008, establishes the merits of that suit. The plaintiff objects to untrustworthy defendants' misrepresentations regarding other suits. The plaintiff requests that irrelevant matter regarding other suits be excluded.

Moreover, defendants' motion should be denied because it is precluded by denial of the motion to dismiss and denial of summary judgment twice. Also, if defendants wanted to object to service, they should not have waived it and should not have waited until trial to raise it. Defendants have failed their duty to mitigate. Defendants' motion should be denied on the basis of laches, contributory negligence, reliance period or analogous doctrine, duty to mitigate, evasion of service, constructive service, equitable estoppel or like doctrine, and/or lack of appropriateness. See Ex parte Cannon, 2009-SC-0624.1988. Defendants' motion should be stricken, dismissed with prejudice, and/or denied.

In stark contrast to defendants' statements otherwise, defendants' motion fails to show:

i. that the lawsuit was done in bad faith and without reasonable cause, and

ii. that a reasonable attorney would believe that the proceedings are frivolous.

In opposition, the plaintiff has submitted Judge Duffy's order which is res judicata establishing defendants' negligence and breach of fiduciary duty in failing to appeal or even advise of appeal of the loss of the physician's injunction. The plaintiff has submitted the opinion letter of the Washington, D.C., Special Antitrust Counsel establishing the merits of the antitrust claims. The plaintiff has submitted the retainer agreement with out-of-state trial counsel who believes the claims are meritorious and not frivolous. The plaintiff submits that the defendants' former partner Betsy Carpentier has stated that she no longer practices law, in whole or in

part, because of the defendants' wrongdoing in this matter. Not only do reasonable attorneys believe that the proceedings are not frivolous, the Federal Court ruled that the defendants are negligent.

Further, defendants' motion states that defendants "will serve and file in advance of hearing." Despite notice, the defendants failed to live up to that promise, too. Defendants lack credibility. The plaintiff was prejudiced by lack of notice and lack of a meaningful opportunity to respond including, but not limited to, out-of-time affidavits, unauthorized attorneys' fees, unverified account including multiple unauthorized charges, non-billable clerical hours, lack of supporting documentation, unreasonable if not excessive charges, and failure to identify custodian and/or employee charged with documentation for charges in the ordinary course of business. Defendants' motion should be denied.

In summary, defendants have not complied with the following statutory requirements. Defendants' motion is not timely. There is no subject matter jurisdiction. Further, defendants' noncompliance includes, but is not limited to, the failure to show finality. Defendants have filed a Rule 59, SCRCP, motion which precludes a showing of finality. Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (S. C. 1997), rehearing denied. In addition, the plaintiff has filed a Rule 59, SCRCP, motion precluding a showing of finality. Moreover, defendants have failed to state with specificity "the manner in which the other party is alleged to have acted in violation of this statute." S.C. Code Ann. Section 15-36-20(2003). Also, defendants have failed to meet their burden of proving that the primary purpose for the proceedings was not that of "securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based." S.C. Code Ann. Section 15-36-10(2003). "The plaintiff's primary purpose was to secure a proper purpose and to secure the adjudication of the civil proceedings." Plaintiff's Affidavit in opposition to defendants' motion, page four. Moreover, the

plaintiff "**MUST** be considered to have acted to secure a proper purpose as stated in item (1) of Section 15-36-10 (2003)" because the plaintiff reasonably believes that under these facts the claim is valid under existing or developing law (emphasis added). Plaintiff's Affidavit in opposition to defendants' motion, page four; S.C. Code Ann. Section 15-36-20(2003). In addition, defendants have offered no evidence to rebut the presumption that the plaintiff acted to secure a proper purpose pursuant to S.C. Code Ann. Section 15-36-10 through 15-36-50 (2003). Therefore, defendants' motion should be stricken, dismissed with prejudice, and/or denied.

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, the plaintiff respectfully makes the following requests:

i. that the plaintiff's motion to dismiss defendants' motion be granted, and/or

ii. that defendants' motion be stricken or dismissed with prejudice, and/or

iii. that defendants' motion be denied because it is precluded by:

a. Judge Barber's denial of defendants' motion to dismiss, and

a. Judge Dennis' denial of defendants' motion for summary judgment, and

c. denial of both parties' motion for summary judgment at trial.

In the alternative, the plaintiff respectfully requests an opportunity to be heard on the plaintiff's Motion to Dismiss defendants' motion for sanctions filed July 7, 2009.

Respectfully submitted,

Dated 8/11/09

C. Collie, Esq.
PO Box 187
Sull. Isd., SC 29482-0187
843.883.3010
For Plaintiff

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	
	MOTION TO RECONSIDER PURSUANT TO RULE 59(e), SCRCP
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

FILED
2009 NOV 25 PM 3:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff respectfully makes a motion for reconsideration pursuant to Rule 59 (e), SCRCP, of the order signed on November 10, 2009. The grounds for said motion are substantial justice affecting substantial rights, and such other and further grounds as may be presented at the hearing on reconsideration pursuant to Rule 59, SCRCP. This Motion is based upon the S.C. Rules of Court, statutory and case law, the record herein, memoranda which may be submitted, and evidence to be presented at the hearing.

For the foregoing reasons, it is respectfully requested that this Court alter and/or amend its order to grant the motions.

Respectfully submitted,

Dated 11/23/09

C. Holmes
P.O. Box 187
Sullivans Island, SC
29482-0187
For Plaintiff

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Thomas Hughston, Jr., Circuit Court Judge

Case No. 2007-CP-10-1444

FILED
2009 DEC -1 PM 1:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY

J. Doe(CHolmes),

Appellant,

v.

Manton Grier, James Y. Becker, and
Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

NOTICE OF APPEAL

The Appellant appeals the orders of the Honorable Thomas Hughston, Jr., entered July 14, 2009, and November 18, 2009.

Dated 11/28/09

C. Collie, Esq.
PO Box 187
Sull. Isd., SC 29482-0187
843.883.3010
For Appellant

Counsel of Record for Respondents:
John Wilkerson, III, Esq.
PO Box 22129
Charleston, SC 29413
843.576.2800

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Thomas Hughston, Jr., Circuit Court Judge

FILED
2010 APR -5 PM 1:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Case No. 2002-CP-10-1448 and
2007-CP-10-1444 after change of venue.

J. Doe(CHolmes),

Appellant,

v.

Manton Grier, James Y. Becker, and
Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the orders of the Honorable Thomas Hughston, Jr., entered February 4, 2010 (written notice of entry of the order was mailed on February 10, 2010, and received on or about February 15, 2010), July 14, 2009, and November 18, 2009, as well as the following orders: July 24, 2002, March 11, 2003, August 10, 2004, February 11, 2008, March 5, 2008, March 26, 2008, May 21, 2008, August 20, 2008, January 9, 2009, January 12, 2009, June 8, 2009(two), June 11, 2009, July 7, 2009(two), and November 10, 2009, and any and all intermediate orders affecting the judgment. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (Ct.App. 1999); Chief Justice Toal *et al, Appellate Practice in South Carolina* (2002), p. 88.

Dated 4-1-10

Chalmers C. Johnson
S.C. ID # 11583
523 So. G. St., Apt.# 402
Tacoma, WA 98405
(425)999-0900



Counsel of Record for Respondents:
John Wilkerson, III, Esq.
PO Box 22129
Charleston, SC 29413
843.576.2800

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT CASE NO.: 07-CP-10-1444
J. Doe(CHolmes), Plaintiff, -vs- Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. Defendants.	MOTION PURSUANT TO RULE 59e, SCRCP

FILED
2012 JUL 17 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The plaintiff respectfully makes this motion pursuant to Rule 59e, SCRCP, for reconsideration of the attached order filed July 11, 2012, and requests that all time limits be held in abeyance pending resolution of this motion. The plaintiff respectfully requests reconsideration because this matter is not final and is currently pending appeal. Because the matter is not final, the exhibits introduced in case number 2007-CP-10-1444 need to be retained by the Clerk of Court and NOT destroyed. The plaintiff respectfully makes this motion, and, if denied, respectfully requests stay of the attached order pending appeal.

This Motion is based upon the S.C. Rules of Court, statutory and case law, the record herein, memoranda which may be submitted, and evidence to be presented at the hearing. For substantial justice affecting substantial rights, the plaintiff requests that this Honorable Court grant this motion and hold all time limits in abeyance pending resolution of this motion.

Accordingly, the plaintiff respectfully requests:

a. that the attached order filed July 11, 2012, be altered or amended to remove case number 2007-CP-10-1444, since case number 2007-CP-10-1444 is not final, and that the plaintiff be notified hereafter in this case at the address below;

b. that because the case is not final, all other orders similarly entered in this case during the pendency of the appeal be vacated, voided, and/or stricken,

c. that all time limits be held in abeyance pending resolution of this motion, and

d. that the Clerk of Court be ordered NOT to destroy any exhibits or material regarding case number 2007-CP-10-1444.

Respectfully submitted,

Dated 7/12/12

C. Holmes
P.O. Box 187
Sullivans Island, SC
29482-0187
For Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
In the Court of Common Pleas

FILED
2012 JUL 11 AM 10:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER

IT APPEARING that final judgment has been entered in the following cited cases and appeal time has elapsed; and

IT APPEARING to the Court that exhibits introduced in the following cited cases no longer need to be retained by the Clerk of Court pursuant to Rule 606 SACR.

IT IS THEREFORE ORDERED that Julie J. Armstrong, Clerk of Court, for Charleston County is hereby authorized to destroy all remaining exhibits in the following cited cases thirty days after the filing of this order.

CIVIL CASE NUMBERS:

2004-CP-10-4203	2008-CP-10-923	2008-CP-10-6542	2010-CP-10-782
2004-CP-10-5197	2008-CP-10-1200	2008-CP-10-6730	2010-CP-10-1486
2005-CP-10-2369	2008-CP-10-1402	2008-CP-10-6883	2010-CP-10-2742
2005-CP-10-2535	2008-CP-10-3061	2008-CP-10-7023	2010-CP-10-2852
2005-CP-10-5049	2008-CP-10-3134	2009-CP-10-424	2010-CP-10-3233
2006-CP-10-1072	2008-CP-10-3393	2009-CP-10-983	2010-CP-10-3759
2006-CP-10-3220	2008-CP-10-4605	2009-CP-10-2030	2010-CP-10-4278
2006-CP-10-3393	2008-CP-10-5001	2009-CP-10-2077	2010-CP-10-4295
2006-CP-10-4258	2008-CP-10-5202	2009-CP-10-2920	2010-CP-10-4597
2006-CP-10-4427	2008-CP-10-5832	2009-CP-10-3444	2010-CP-10-4740
2007-CP-10-779	2008-CP-10-5834	2009-CP-10-3537	2010-CP-10-5097
2007-CP-10-1169	2008-CP-10-6035	2009-CP-10-5433	2010-CP-10-5684
2007-CP-10-1444	2008-CP-10-6036	2009-CP-10-7488	2010-CP-10-6001
2007-CP-10-2279	2008-CP-10-6077	2009-CP-10-8082	2010-CP-10-6435
2007-CP-10-2845	2008-CP-10-6144	2009-CP-10-8083	2010-CP-10-6688
2008-CP-10-525	2008-CP-10-6250	2010-CP-10-163	2010-CP-10-7282
2008-CP-10-806	2008-CP-10-6438	2010-CP-10-466	2010-CP-10-8129
2008-CP-10-849	2008-CP-10-6453	2010-CP-10-481	2010-CP-10-8163

IT IS SO ORDERED

DEADRA L. JEFFERSON
CHIEF ADMINISTRATIVE JUDGE
COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CHARLESTON, SOUTH CAROLINA
7/5, 2012

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	CERTIFICATE OF SERVICE
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

FILED
2012 JUL 17 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

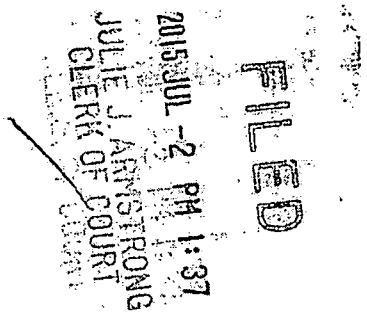
I hereby certify that on this date a copy of the foregoing motion was served on defendants' counsel of record via USPS on this date:

John Wilkerson, III
40 Calhoun St.
Charleston, SC 29401

Dated 7/16/12

C. Holmes
PO Box 187
S.I., SC 29482

STATE OF SOUTH CAROLINA	)IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO.: 07-CP-10-1444
	)
J. Doe(CHolmes),	)
	)
Plaintiff,	)
	)
-vs-	)
	)
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	) RULE 59(e), SCRCP, MOTION
	)
	)
	)
	)
	)
	)
	)
Defendants.	)
	)



To Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order to alter or amend the order entered June 18, 2015, and postmarked June 23, 2015.

The plaintiff respectfully makes this motion pursuant to Rule 59e, SCRCP, for reconsideration of the order entered July 18, 2015, and requests that all time limits be held in abeyance pending resolution of this motion. The plaintiff respectfully requests reconsideration because this matter is currently pending SCOTUS appeal. Because the matter is pending SCOTUS appeal, it is respectfully requested that the exhibits introduced

in case number 2007-CP-10-1444 need to be retained by the Clerk of Court and NOT destroyed. The plaintiff respectfully makes this motion, and, if denied, respectfully requests stay pending appeal.

Due process requires notice, meaningful opportunity to be heard, and judicial review. These are matters of public importance, including but not limited to, failure of the conflicted justice to recuse and/or denial of the motion to recuse without comment and without enough specificity for meaningful review. Moreover, the constitutionality of the revised S.C. Code Ann. Section 15-36-10 is also pending appeal. That statute incorporates a reasonable attorney standard, which is not reasonable notice to the layperson or affected parties. Accordingly, the statute is null and void. Further, the revised S.C. Code Ann. Section 15-36-10 is constitutionally flawed including deprivation of right to full and fair hearing at trial by jury. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory and case law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the

undersigned respectfully requests this Court alter or amend the order entered June 18, 2015, and postmarked June 23, 2015.

Respectfully submitted,

Dated June 30, 2015.

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	CERTIFICATE OF SERVICE
-vs-	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

FILED
2015 JUL -2 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT

I hereby certify that a copy of the foregoing motion was timely forwarded to the presiding judge and was served on this date on defendants' counsel of record via USPS, postage pre-paid:

John Wilkerson, III
Richard Dukes
40 Calhoun St., Ste. 200
Charleston, SC 29401

Dated July 1, 2015

C. Holmes
PO Box 187
S.I., SC 29482
843.883.3010

STATE OF SOUTH CAROLINA	)IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	)
Plaintiff,	)
-vs-	)
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	) RULE 60, SCRCP, MOTION
Defendants.	)

FILED
2015 AUG -5 AM 8:46
JULIE J. ARMSTRONG
CLERK OF COURT

To Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 60, SCRCP.

Rule 60, SCRCP, provides that the court may relieve a party from a judgment or order. That Rule provides as follows:

Rule 60, SCRCP - Relief From Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Grounds for the motion include, but are not limited to, those which follow. By analogy, under the Federal Rules of Civil Procedure, Rule 60 may be used to reconsider legal issues, and Rule 60(b)(1) specifically provides that the court may relieve a party from an order for reasons of its own mistake or inadvertence. *See Kingvision Pay-per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999). "The word 'mistake' in Rule 60(b) has been read to include mistakes by the court. *See, e.g., Tarkington v. United States Lines Co.*, 222 F.2d 358 (2d Cir.1955)." *McQuatters v. Town of Irmo Corp.* (D.S.C., 2012), Case No. 3:10-1375-CMC-PJG, January 3, 2012. South Carolina Rule of Civil Procedure 60(b)(1) provides that upon motion, the court may relieve a party from a final judgment for "mistake, inadvertence, surprise or excusable neglect." *Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (S.C., 1988). As one example, application of the improper legal standard under the inapplicable revised FCPSA is a mistake warranting

reconsideration and relief. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011). In addition, under Rule 60(b)(2), SCRCP, there is newly discovered evidence supporting this motion which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCP. Further, there is misrepresentation, and/or other misconduct of an adverse party warranting relief under Rule 60(b)(3). As just one example, despite plaintiff's timely objections, defendants wrongfully misrepresented that the wrong statute applied. Moreover, the revised FCPSA is pending constitutional challenge on its face and as applied. To the extent the judgment is based on, adversely affected by, and/or prejudiced by that unconstitutional statute, the judgment is void under Rule 60(b)(4), SCRCP. In addition, by analogy, the recent case of *Conquista Consultoria E Assessoria Empresarial Ltda v. Iguacu, Inc.*, provides, "It has long been the case that 'the jurisdiction of the court depends upon the state of things at the time of the action brought.' *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance*, 9 Wheat 537, 539, 6 L.Ed. 154 (1880)." *Conquista Consultoria E Assessoria Empresarial Ltda v. Iguacu, Inc.* (N.D. Cal., 2015), Case No. 11-cv-00602-RS, July 6, 2015. As such, controlling precedent in *Southeastern Site Prep* confirms that the revised FCPSA is inapplicable which resulted in error of law and/or lack of subject matter jurisdiction, thereby voiding the judgment. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011). Pursuant to Rule 60(b)(5), SCRCP, a prior judgment upon which the judgment herein is based has been reversed or otherwise vacated which justifies Rule 60 relief, including but not limited to the following. Over plaintiff's timely objections, defendants wrongfully induced this

Honorable Court to rely on a prior sanctions order in unrelated matter which was not final and which was then pending appeal. Plaintiff is prejudiced because controlling precedent has now overturned that order. Accordingly, that prior wrongful revised FCPSA order erroneously formed a basis, if not the basis, for the order herein, thereby warranting relief under Rule 60. Finally, for substantial justice affecting substantial rights, including but not limited to the reasons stated, it is no longer equitable that the judgment should have prospective application. Rule 60(b)(5), SCRCP.

These are matters of public importance, including but not limited to, due process and Justice Hearn's failure to recuse after wrongfully denying the plaintiff's right of direct appeal in the Court of Appeals based on the wrongful sanctions, monetary and non-monetary, in the appeal of that very order. Justice Hearn, as the participating former Court of Appeals judge, was thereby conflicted but wrongfully denied motion to recuse without comment and without enough specificity for meaningful judicial review. Moreover, the constitutionality of the revised S.C. Code Ann. Section 15-36-10 is pending appeal. That statute incorporates a reasonable attorney standard, which is not reasonable notice to the layperson or affected parties. Further, the revised S.C. Code Ann. Section 15-36-10 is constitutionally flawed including deprivation of right to full and fair hearing at trial by jury. See *Pond Place Partners, Inc., v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (the trial court found that a trial on the frivolous proceedings depended on the resolution of the underlying legal cause of action **after appeal**). "It has been decided by this court too often to require citation of the cases that a plaintiff cannot, by framing his complaint so that his action would, under the old procedure, be one cognizable only by a court of equity, select the forum in which the issue shall be tried, and thereby defeat a defendant's constitutional

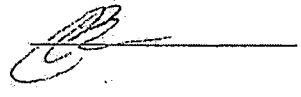
right of trial by jury." *Southern Ry v. Howell*, 89 S.C. 391, 71 S.E. 972 (S.C., 1911). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory law, case law, and Constitutional law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests relief pursuant to Rule 60, SCRCP.

Respectfully submitted,

Dated August 3, 2015.



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT CASE NO.: 07-CP-10-1444
J. Doe(CHolmes), Plaintiff, -vs- Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. Defendants.	MOTION TO DISMISS

FILED
2016 DEC 30 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The plaintiff respectfully makes this motion to dismiss defendants' pro se, so-called verified petition and pleading filed on or about the 21st of December 2016, which we just received. Defendants' pro se petition does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure and it should be dismissed. Moreover, the pro se petition is false, contains material misstatements of fact, and is not properly supported or verified. Strict compliance with the rules and statutes is required. Because defendants' pro se pleading materially fails to comply, it fails for lack of jurisdiction as well. The grounds for said motion are substantial justice affecting substantial rights and such other and further grounds as may be presented at the hearing. This Motion is based upon the S.C. Rules of Civil Procedure, statutory and case law, the record herein, memoranda which may be submitted, and evidence to be presented at the hearing.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 12/28/16

C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

STATE OF SOUTH CAROLINA)IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),

Plaintiff,

-vs-

Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.

Defendants.

CERTIFICATE OF SERVICE

FILED
2016 DEC 30 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies that a copy of the foregoing motion was served upon the attorney for all Defendants on this date by deposit in the U.S. Mail with sufficient postage thereon to ensure prompt delivery as follows:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated 12/28/16

C. Holmes
P.O. Box 187
Sullivans Island, SC
29482-0187
843.883.3010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker,

Defendants.

C/A NO: 2007-CP-10-01444

VERIFIED PETITION

FILED
2017 JAN -3 AM 9:14
JULIE J. ARMSTRONG
CLERK OF COURT

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker (hereinafter the "Defendants") would respectfully show:

1. Defendants are the holder of a judgment against Plaintiff, Cynthia Holmes, M.D. (hereinafter the "Plaintiff"), entered on November 18, 2009 in Charleston County, South Carolina (hereinafter the "Judgment").

2. Plaintiff remains liable for the Judgment having failed and refused to satisfy the same. The amount due on the Judgment is as follows:

Original Amount of Judgment against Defendant as of November 18, 2009:	$200,000.00
Post Judgment Interest due as of December 16, 2016:	103,153.42
Costs pursuant to Order dated September 8, 2014:	1,047.60
Total Amount Due on Judgment as of December 16, 2016:	$304,201.02

3. An Execution of Judgment was sent to the Sheriff of Charleston County, and the Sheriff has returned the same *nulla bona*. *See* Exhibit A.

4. Upon information and belief, Plaintiff has assets in the County not exempt from levy which she unjustly refuses to apply toward satisfaction of said Judgment.

5. Defendants are informed and believe that they are entitled, under S.C. Code Ann. § 15-39-310, to have an examination of the Plaintiff in supplementary proceedings to ascertain and discover any and all property and assets, real, personal, or mixed and wheresoever situated, belonging to Plaintiff or in which Plaintiff could claim any interest, solely, or in conjunction with any person, firm, corporation, or entity, and any or all of which is or should be made applicable by the Court to the payments of said debt.

6. Defendants are further informed and believe that they are entitled to the appointment of a Receiver of Plaintiff for any and all of the aforesaid property, assets, or effects which are so discovered or revealed, to carry such judgment into effect.

WHEREFORE Defendants prays that this Court do inquire into the matters hereinabove alleged and that it issue such Order granting relief to which Defendants believe they are entitled, for all expended and statutory costs allowable for these proceedings, and for such other and further relief as the Court deems just and proper.

Defendants further request that this matter be heard by the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, pursuant to South Carolina Rule of Civil Procedure 53, with authority to enter a final order, with any appeal directly to the South Carolina Supreme Court.

HAYNSWORTH SINKLER BOYD, P.A.

James Y. Becker, SC Bar No. 64991
Mary M. Caskey, SC Bar No. 76198
Post Office Box 11889
Columbia, South Carolina 29211
jbecker@hsblawfirm.com
mcaskey@hsblawfirm.com
Telephone: (803) 779-3080

ATTORNEYS FOR DEFENDANTS

December 19, 2016

DM: 4785929 v.1

16-11686

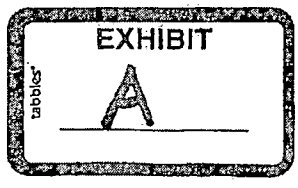
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Cynthia Holmes, M.D.,	)	C/A NO: 2007-CP-10-01444
	)	
Plaintiff,	)	
	)	
vs.	)	**WRIT OF EXECUTION**
	)	
Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker,	)	
	)	
Defendants.	)	

TO THE SHERIFF OF CHARLESTON COUNTY, SOUTH CAROLINA:

You are required to satisfy the following judgment entered in this action on November 18, 2009 (see Exhibit A) along with the judgment entered by Order of the Supreme Court of South Carolina on September 9, 2014 (see Exhibit B), out of the personal property of the judgment debtor, Cynthia Holmes, M.D., and, if sufficient personal property cannot be found, out of the real property belonging to the judgment debtor:

Judgment Creditors:	Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James T. Becker
Judgment Debtor:	Cynthia Holmes, M.D.
Amount of Judgment:	$200,000.00, plus post judgment interest from November 18, 2009; and
	$1,047.60 for costs pursuant to Order of the Supreme Court of South Carolina

[CONTINUED ON FOLLOWING PAGE]



Amount Actually Due: No portion of the judgment has been paid, so the full amount set forth above is due.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76198
Post Office Box 11889
Columbia, SC 29211
Telephone: (803) 779-3080
mcaskey@hsblawfirm.com

October 19, 2016
Columbia, South Carolina

ATTEST:

Julie J. Armstrong (SEAL)
Clerk of Court for Charleston County, SC

DATE: Oct. 20, 2016

DM: 4716893 v.1

CHARLESTON COUNTY SHERIFF'S OFFICE
J. AL CANNON, JR., ESQ., SHERIFF
100 BROAD STREET SUITE 381
CHARLESTON, SC 29401
(843) 958-2100

RETURN ON
EXECUTION

SERVICE SHEET NO: CIEX-16011686

COURT: CHARLESTON COUNTY COURT OF COMMON PLEAS CASE NO: 2007CP1001444

TITLE: HAYNSWORTH SINKLER BOYD, PA ET AL VS. CYNTHIA HOLMES, MD

NULLA BONA. THE DEFENDANT HAS NO KNOWN ASSETS TO LEVY ON AT THIS TIME.
ONE VEHICLE TITLED TO BANK ONLY, RESIDENCE 1/2 INTEREST IN NAME:
CYNTHIA ELAINE COLLIE - NOT DEFENDANT

EXECUTED: 12/08/16

J. AL CANNON, JR., ESQ.
SHERIFF OF CHARLESTON COUNTY

BY _____
Deputy

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT DOCKET NO. 07-CP-10-1444
CYNTHIA HOLMES, M.D. Plaintiff, vs. HAYNSWORTH, SINKLER & BOYD, P.A., successor to SINKLER & BOYD, P.A., MANTON GRIER, and JAMES Y. BECKER, Defendants.	**ORDER on POST TRIAL MOTIONS**

FILED
2009 NOV 18 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on several post trial motions filed by Plaintiff and on Defendants' Motion for Sanctions Pursuant to S.C. Code Ann. 15-36-10, Rule 11, SCRCP, and pursuant to the Court's inherent authority to award attorneys' fees where the losing party has acted in bad faith, vexatiously, or for oppressive reasons. Having considered the materials submitted by Plaintiff in support of her motion, and having heard oral argument from the parties, the Court finds as follows with respect to Plaintiff's post trial motions:

1. Plaintiff's Motion to Dismiss Defendants' Motion for Sanctions that she filed with the Court on July 7, 2009, is **DENIED.**

2. Plaintiff's Motion for New Trial that she filed on July 20, 2009 is **DENIED.**

3. Plaintiff's Motion for Reconsideration of the Court's Order denying her Motion for Continuance that she filed on July 21, 2009, is **DENIED.**

4. Plaintiff's Motion for Reconsideration of the Court's Order Granting Directed Verdict to Defendants that she filed on August 3, 2009 is **DENIED.**

#1
P.L.H.

EXHIBIT
A

5. Plaintiff's Motion to Strike and/or Dismiss Defendants' Motion for Sanctions that she filed on September 21, 2009 is **DENIED.**

6. To the extent Plaintiff has moved that Defendants or their counsel be sanctioned, such motion is **DENIED.**

DEFENDANTS' MOTION FOR SANCTIONS

I have also considered Defendants' Motion for Sanctions and find that, given the circumstances discussed below, sanctions are appropriate and Defendants' Motion is hereby **GRANTED.**

I need not provide another detailed recitation of the facts of this case or the evidence presented or not presented at trial. Rather, I refer to the discussion in my Order Granting Defendants' Directed Verdict. In ruling on Defendants' Motion, I specifically find that sanctions are warranted under either the former South Carolina Frivolous Civil Proceedings Act, or the Act that became effective on July 1, 2005. I also find that sanctions are appropriate under Rule 11, SCRCP, and under the Court's inherent authority. It became clear to me that Plaintiff lacked any substantial evidence to support her claims against these Defendants, her former lawyers, and that Plaintiff's initiation and continuation of this lawsuit was done with no reasonable cause, and that any reasonable attorney would have believed that the proceedings to date have been frivolous.

As became evident throughout trial, Plaintiff filed a non-meritorious and baseless lawsuit. Prior to filing suit, Plaintiff obviously conducted no serious investigation of the facts she would be required to prove to substantiate her wide-ranging claim. Rather, the entire tenor of Dr. Holmes' case appears to be her belief that she is right and her former lawyers and 4 other courts are all wrong. Plaintiff failed to develop any evidence that could satisfy her burden of proof at trial. Any reasonable attorney would conclude that Plaintiff's entire case was

#2 T.L.B.

completely frivolous and was brought, and continued for seven years, without any reasonable basis.

Plaintiff engaged in dilatory litigation tactics and appealed numerous interlocutory matters, including orders regarding venue and several orders on discovery matters. These appeals were likewise frivolous and dilatory. Plaintiff also has submitted numerous affidavits and memoranda accusing Defendants and defense counsel of engaging in all manner of inappropriate and abusive conduct, each of which has been dismissed and discounted by the Court, and all of which were submitted without reasonable basis. Plaintiff has never accepted the rulings of the Court and has moved for reconsideration on each and every order denying whatever relief she sought, sometimes multiple times.

Based upon the complete dearth of any evidence whatsoever to support any essential element of any of the 15 separate causes of actions Plaintiff asserted, I granted Defendants' Motion for Directed Verdict. I had, at the very beginning of trial, denied Defendants' Motion for Summary Judgment. However, as I stated, that ruling was based on the Court's unfamiliarity with the facts of the case and was not directed to the merits of Defendants' Motion. Given our system for assigning cases for trial, I had only a few days earlier gained any knowledge of this case. It is three Clerk's files, each about four inches thick for a total of twelve inches of paper, and that does not include the depositions. There was no practical way for me to deal with competing Motions for Summary Judgment on Monday of the trial week. I simply let the case go forward. If I had known then what I knew five days later, I would have granted Defendants' Motion for Summary Judgment. Plaintiff did not sustain her burden of establishing a genuine issue of material fact for trial even after several days of testimony. This, quite simply, is because there were no genuine issues of material fact for trial. Most importantly, Plaintiff presented no

#3 T.L.H.

expert testimony regarding the essential elements of her attorney malpractice claim and presented no testimony or evidence that anything done by the Defendants or not done by the Defendants was wrong. Furthermore, the record contains no evidence that Plaintiff suffered any damages as a proximate result of anything the Defendants either did or did not do. In short, Plaintiffs claims were so utterly baseless and lacking in any evidentiary support that no reasonable lawyer, judge, or jury could conceivably think her claims had any merit whatsoever.

1. **Sanctions are appropriate pursuant to the current §15-36-10.**

The Frivolous Civil Proceedings Sanctions Act (hereinafter "the Act"), S.C. CODE ANN. §15-36-10 allows the Court to impose sanctions for the initiation and prosecution of meritless civil actions. In 2005, the former Frivolous Civil Proceedings Act, S.C. CODE ANN. §§15-36-10 through 15-36-50 was repealed effective March 21, 2005, by Act No. 27, 2005 S.C. Acts, 121, §12. Act 27 §4 reenacted the Frivolous Civil Proceedings Act effective July 1, 2005. *See Rutland v. Holler, Dennis, Corbett, Ormond & Garner*, 637 S.E.2d 316 (S.C. 2006). The new statute is applicable to all causes of action arising on or after that date.

The tortured procedural history of this case is as follows: Plaintiff filed her original Complaint in Charleston County in 2002. Venue was transferred to Richland County on the motion of Sinkler & Boyd, and Dr. Holmes appealed the Order transferring venue, ultimately to the South Carolina Supreme Court. Dr. Holmes' appeal was dismissed as interlocutory. On August 17, 2004, after Dr. Holmes' first round of appeals concluded, Judge Barber in Richland County granted Defendants' Motion to Strike or for a More Definite Statement and required Dr. Holmes to serve and file an Amended Complaint within thirty (30) days. Then followed a number of appeals on various issues, each of which ultimately went to the South Carolina Supreme Court and each of which again was dismissed. Those appeals concluded in November,

#4 T.L.B.

2006. Dr. Holmes then served an Amended Complaint that all Defendants answered. Dr. Holmes then moved to transfer venue back to Charleston County, which Motion was granted by Judge Childs in Richland County.[1] On February 3, 2007, Plaintiff filed and served another Amended Complaint, in which she added numerous additional claims and allegations against the Defendants, to which the Defendants timely filed answers. This final Amended Complaint was the pleading that formed the entire basis for the case that went to trial in June, 2009. It is this Amended Complaint that constituted the frivolous civil proceeding that Dr. Holmes instituted and continued and is the pleading on which Defendants' Motion for Sanctions is based. *See e.g. Horry County v. Parbel*, 378 S.E.2d 253, 266, n.1 (S.C. Ct. App. 2008).

Section 15-36-10(C)(1) of the Act, provides, in pertinent part that after a case has been dismissed by a directed verdict, upon motion of the prevailing party, the court *shall* proceed to determine if the claim was frivolous. S.C. CODE ANN. §15-36-10(C)(1). An attorney, party, or *pro se* litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or *pro se* litigant failed to comply with one of the following conditions:

> (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
>
> (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonable founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or

#5 T.L.H.

1 As a further example of Dr. Holmes' manner of litigating, the Court notes that, in seeking transfer of venue from Richland County to Charleston County based upon the convenience of witnesses, Plaintiff submitted an affidavit stating that she had more than 50 physicians who were potential trial witnesses, all of whom were located in Charleston. Dr. Holmes called only 1 physician to testify at trial, and that testimony was completely irrelevant to any of Dr. Holmes' claims.

adjudication of the claim or defense upon which the proceedings are based.

Section 15-36-10(E) of the Act sets forth the elements a court should consider when determining whether an attorney, party, or a pro se litigant has violated the provisions of [the Act], stating the court shall take into account the following:

(1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to he allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

In particular, Dr. Holmes violated the Act by virtue of her baseless attempt to couch what was, in all events, a meritless legal malpractice case, as a far reaching conspiracy and fraud claim. Dr. Holmes never produced any tangible evidence to support any of her fifteen (15) separate causes of action, much less to support her legal malpractice case. Over the course of seven years of litigation, Dr. Holmes apparently failed to adduce an iota of evidence to support *any* of her claims—she failed to come forward with evidence to support any of the essential elements of her claims and causes of action and relied solely on her own conclusory narrative as the "proof" of the validity of her claims. Furthermore, she never provided any evidence whatsoever of her alleged damages. In short, though this case was pending and active for seven

#6 T.L.K.

years, Dr. Holmes could not prove her case, and she failed to present any substantive evidence in support of her claims. She had no evidence of her damages, nor did she ever produce any substantive evidence of proximate causation. No reasonable attorney would have brought such claims without a shred of evidence to support the allegations Dr. Holmes made in her lengthy Amended Complaint, and no reasonable attorney would have pressed such claims without any evidence of damages.

Additionally, Dr. Holmes appealed nearly every ruling on pretrial motions throughout the case. All told, Dr. Holmes filed at least six separate appeals of interlocutory orders, failing on each and every one. Dr. Holmes appealed an order transferring venue; she appealed the dismissal of her motions filed in one county after venue had been transferred to another county; she appealed an order ruling that she could not proceed anonymously; and she appealed orders on discovery matters, including orders quashing her own improperly issued subpoenas. In each appeal, Dr. Holmes petitioned for writ of *certiorari* from the Supreme Court and, when that was denied, she requested *en banc* hearings and filed petitions for review of the decision in the original jurisdiction of the Supreme Court. Dr. Holmes has, quite simply, invoked every conceivable appellate procedure with respect to matters that were almost uniformly interlocutory.

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being reassigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Holmes engaged in a lengthy, albeit fruitless, administrative appeal of the Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her

#7 T.L.S.

state court case against the Hospital.[2] In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges.[3] In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a $90,000 sanction for violation of the Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in the absence of evidentiary support. Her tactics have been dilatory, vexatious, that is, brought without sufficient grounds, oppressive and unreasonable. Her conduct clearly warrants a severe punishment.

Section 15-36-10(G) of the Act sets forth the sanctions allowable under the Act including (1) reasonable costs and attorney's fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith. "The determination of whether attorney's fees should be awarded under the

#8 T.L.B.

2 In very similar fashion to the claims against these Defendants, Dr. Holmes alleged a wide array of claims against the Tennessee lawyers including attorney malpractice, unfair trade practices, civil conspiracy, promissory estoppel, conversion, and inadequate supervision, breach of fiduciary duty, and unspecified fraudulent conduct. *See Doe v.* Duncan, 2008 WL 4367314 (Tenn. Ct. App. 2008). Dr. Holmes' cases against the Tennessee attorneys have been dismissed in both states. Dr. Holmes appealed the Tennessee court's order granting summary judgment against her, but both the Court of Appeals of Tennessee and the Tennessee Supreme Court affirmed that decision. Dr. Holmes has appealed the dismissal of her South Carolina case as well.

3 In the 2005 case she sued East Cooper Hospital, Tenet HealthSystem Medical, Inc., Dr. John Grady, and Dr. Paul Yantis for (1) breach of contract; (2) breach of a covenant of good faith and fair dealing; (3) breach of contract accompanied by a fraudulent act; (4) civil conspiracy; and (5) violation of the South Carolina Unfair Trade Practices Act.

Frivolous Proceedings Act is treated as one in equity." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997). I find that Plaintiff should be sanctioned under the Act.

2. Dr. Holmes' claims are also sanctionable under the former §15-36-10.

Even were the former version of the Act to be applied, I find that Dr. Holmes' claims are, in fact, frivolous, completely without evidentiary support, and wholly meritless. Under the former provisions of §15-36-10:

> Any person who takes part in the procurement, initiation, continuation, or defense of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney's fees and court costs of the other party if:
>
> (1) he does so primarily for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based; and
>
> (2) the proceedings have terminated in favor of the person seeking an assessment of fees and costs.

As is discussed above, Plaintiff had no logical or reasonable basis for bringing these claims against the Defendants. Section 15-36-20 is instructive in interpreting Section 15-36-10. It speaks in terms of reasonableness. Given my opportunities to observe and hear Dr. Holmes, I have no doubt she is sincere in her beliefs about this case. It is just that her beliefs are not reasonable. Any competent, reasonable attorney would reach this conclusion. Some of her unreasonable conclusions can be attributed to the fact that she has really never practiced law in any real sense of those words. This was revealed in her testimony when she tried to testify as her own expert. I cannot imagine a competent, experienced trial attorney telling her she had a case. It was unreasonable for her to conclude such on her own. She had no evidence of any sort that the Defendants did anything incorrectly, nor did she have any evidence that anything the Defendants did or did not do had any effect on her. Rather, her entire case consisted of a belief

#9 T.L.H.

that everything bad that has happened in her career was the fault of the Defendants. Sadly, her blame was, and is, totally misplaced. This case never should have been brought in the first place.

Based on the foregoing, it is clear to me that Plaintiff's claims were completely frivolous within the meaning of the former §15-36-10 and that Plaintiff ought be assessed for payment of all or part of Defendants' attorney's fees.[4]

3. Plaintiff's commencement and continuation of this action is sanctionable under Rule 11.

Dr. Holmes is an attorney licensed to practice law in the State of South Carolina. Her license is active and she is in good standing with the South Carolina Bar. Rule 11 allows an award of attorney's fees when the court finds the opposing party has filed pleadings that were made in bad faith or were frivolous. *Harris-Jenkins v. Nissan Car Mart*, 557 S.E.2d 708, 711 (S.C. Ct. App. 2001). The standard for Rule 11 sanctions is essentially the same as that of the Frivolous Civil Proceedings Act. *Father v. S.C. Dept. of Soc. Services*, 578 S.E.2d 11, 15 (S.C. 2003).

As is set forth more fully above, it is clear to me that Plaintiff's claims were entirely frivolous and, for that reason, I find that Dr. Holmes is subject to sanction under Rule 11.

4. Dr. Holmes' conduct is subject to sanction under the Court's inherent authority

As the United States Supreme Court has held, Courts have an inherent authority to award attorney's fees where the losing party has "acted in bad faith, vexatiously, or for oppressive reasons." *See e.g. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975). Plaintiff

#10 T.L.H.

[4] During Plaintiff's oral argument, she seemed to take the position that "attorney's fees" meant the fees charged by one attorney and that the Court could not award fees for all the attorneys and staff who worked on the defense of the case. Plaintiff's contention is unpersuasive and the Court rejects her position. The reality of the practice of law is that oftentimes several attorneys and staff work on large and complex cases and that all these fees and the expense of defending a frivolous suit can be assessed.

conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains. I find that Dr. Holmes' case against these Defendants was completely baseless and that she is subject to sanction based upon the inherent authority of courts to sanction litigants who act in bad faith, vexatiously, that is, without proper grounds, or for oppressive and improper purposes. It is not her actual intent to harm, but harm is the reasonably foreseeable outcome.

CONCLUSION

Dr. Holmes' frivolous case against James Becker, Manton Grier, and Haynsworth Sinkler Boyd, and her manner of litigating, and appealing, every issue in the case, has caused the Defendants to incur very substantial legal fees and costs over the seven year span of the case. The Defendants' actual attorneys' fees and expenses incurred in the defense of this action amounts to over $400,000.00. The attorneys' fees for trial alone were $27,531.00. Time spent preparing for trial (twice, due to Dr. Holmes' last minute plea for a continuance) resulted in actual attorneys' fees of $94,600.00. This case also resulted in Defendants having to pay $32,240.22 in expert witness fees. I find these fees to be reasonable and, given the manner in which Plaintiff chose to litigate this frivolous case, expected.

Furthermore, the Defendants themselves were forced to devote time to defending the case—time that was taken away from other clients and other matters, resulting in considerable lost opportunity costs to the Defendants. The Defendants' time devoted to defending Plaintiff's

baseless claims resulted in the Defendant lawyers and their staff devoting nearly 600 hours of their own time to the case. Dr. Holmes' frivolous complaint and dilatory and vexatious actions resulted in lost opportunity costs to the Defendant lawyers more than $200,000.00 in lost revenue. The trial alone cost Defendants $36,752.00 in lost opportunity costs. The time spent preparing for trial resulted in lost opportunity costs for the Defendants equal to $45,844.00. Under Rule 11 and pursuant to the Court's inherent powers, the Court is authorized to award an appropriate sanction that may include a monetary award to defendants to compensate them for the revenue lost by these defendants.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

Based upon the foregoing, the Court sanctions Plaintiff, Dr. Cynthia Holmes, and enters judgment against her in the amount of $200,000.00. This represents a combination of some reasonable attorneys' fees, necessary costs and fees. I have not included any lost opportunity costs. It is not as much as is justified by the facts. I am giving Dr. Holmes a "break". It boils down to where this cost should fall--on Defendants' liability insurance carrier, or on Dr. Holmes who is obviously, in my opinion, laboring under an obsession not grounded in fact or reason. It is a figure that is tempered by equity and mercy, but I hope will deter her from similar conduct in the future.

#12 T.L.H.

By this Order, the Court instructs the Clerk of Court to enroll the amount awarded as a sanction against Dr. Holmes on the Roll of Judgments as a judgment against her.

Pursuant to S.C. Code of Laws Section 15-36-10(G)(3), I enjoin Dr. Homes from filing any other suit on her own behalf. If she desires to file a suit for a claim of her own, she must have another attorney sign any pleading subsequent to this date. If she desires relief from this, she may petition by giving notice of such to the Chief Administrative Judge for the Circuit in which she wishes to file suit and may be heard on her petition within 30 days.

I cannot conclude without saying that my heart and sympathies go out to Dr. Holmes. It is painful for me to see and hear her put herself through this. She is well educated with a law degree and medical degree with a specialty. She can do much that is worthwhile and of benefit to her clients and herself. Something has happened to throw her off track, and to, I can only conclude, become obsessed with this and other situations. This is indeed unfortunate, and I can only hope that something will happen to help her move on and away from this. She needs help—legal and perhaps otherwise. I hope she gets it.

AND IT IS SO ORDERED.

#83

T. L. Hughston, Jr.

Thomas L. Hughston, Jr.
Presiding Judge

November 18, 2009
Charleston, South Carolina

The Supreme Court of South Carolina

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth, Sinkler & Boyd, P.A., Successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker, Respondents.

Appellate Case No. 2010-154986

The Honorable Thomas L. Hughston, Jr.
Charleston County
Trial Court Case No. 2007-CP-10-01444

FILED
2014 SEP -8 PM 3:39
JEAN H. TOAL
CLERK OF COURT
BY

ORDER

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, the Motion for Costs filed by the respondents is granted in the amount of $1,047.60 against the appeallant in the above entitled matter. The Clerk of Court for Charleston County is directed to add this award of costs to the remittitur in this matter.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

September 4, 2014

EXHIBIT
B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON J. Doe(CHolmes), Plaintiff, -vs- Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. Defendants.	)IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 07-CP-10-1444 NOTICE OF MOTION AND MOTION FOR SANCTIONS

FILED
2017 JAN 12 PM 1:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: Defendants and Defendants' Counsel

PLEASE TAKE NOTICE that the plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order for sanctions as to defendants and defendants' counsel pursuant to Rule 11, SCRCP, pursuant to S.C. Code Section 15-36-10, and/or pursuant to this Honorable Court's inherent authority regarding defendants' and/or defendants' counsel's false statements, misrepresentations, and *pro se* unverified petition made to this Honorable Court regarding order entered in this matter on January 3, 2016. Defendants and/or defendants' counsel knew or should have known the falsity of the statements. Despite knowing the statements were false and/or misleading, defendants and/or defendants' counsel enticed this

Honorable Court to rely on the material misstatements and thereby perpetrate fraud upon the Court. This motion is based on grounds of defendants and/or defendants' counsel's wrongdoing and material misstatements, including but not limited to defendants' unverified *pro se* petition pursuant to statutory and case law, affidavit(s), and evidence to be presented at the motion hearing on this matter.

This motion will be based on the pleadings, discovery, proposed orders, and/or other documents regarding wrongdoing by defendants and/or defendants' counsel and affidavit(s) as well as Memorandum of Law.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 1/12/17

C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	CERTIFICATE OF SERVICE
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

FILED
2017 JAN 12 PM 1:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies that a copy of the foregoing motion was served upon the attorney for all Defendants on this date by deposit in the U.S. Mail with sufficient postage thereon to ensure prompt delivery as follows:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated 1/12/17

C. Holmes
P.O. Box 187
Sullivans Island, SC
29482-0187
843.883.3010

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	NOTICE OF MOTION AND
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	RULE 59(e), SCRCP, MOTION
Defendants.	

FILED
2017 JAN 25 AM 11:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

To Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order to alter or amend the order entered January 3, 2017, with notice postmarked January 6, 2017 (copy attached), and received January 11, 2017.

The Plaintiff respectfully makes this motion pursuant to Rule 59(e), SCRCP, regarding the order, and requests that all time limits be held in abeyance pending resolution of this motion.

This case is a suit for professional negligence wherein the Federal District Court ruled that Defendants wrongfully failed to timely appeal Defendant's negligent loss of injunction resulting in damages, thereby committing malpractice. See attached Federal District Court Order.

At trial, Defendants failed to extend professional courtesy for Plaintiff's trial counsel, who was in out-of-state court, to appear. The trial proceeded at Defendant's self-serving insistence without opposing trial counsel. At trial, Professor John Freeman testified under oath before the jury that what Defendants did when they threatened to prejudice the case in order to extract fees was "unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that." See attached Trial Transcript excerpt of Professor John Freeman's testimony. A jury could and should reasonably find that the negligent and/or criminal acts are a breach of the standard of care. Despite the obvious questions of fact, the jury was denied the right to find the facts when directed verdict was wrongfully granted by a retired judge. Because retired judges have no support staff, the retired judge essentially allowed Malpractice Defendants to write their own order. Consequently, that order does not reflect the record or reality. Transcript available upon request. Moreover, Defendants materially fail to disclose differing findings by the appellate courts. See attached Transcript Excerpt of Oral Argument by the Physician's Trial Counsel who was unfairly denied the opportunity to appear at trial.

Thereafter, Defendants misrepresented that the wrong statute applied and filed a motion for sanctions. But for the unconstitutional retroactive application of the amended S.C. Code Section 15-36-10, we would not be here. Any well-trained Physician would and should adamantly object.

The South Carolina Rules of Court shall be construed to do substantial justice. Though no deadline was imminent, Defendants chose to mail a copy of the *pro se*, so-called verified petition to the Physician on December 19, 2016, just in time for the Christmas Holidays with family and friends. Defendants, bless their hearts, are real sweethearts. Defendant's *pro se* petition does not comply with the South Carolina Rules of Court. Moreover, the *pro se*, so-called verified petition is disputed, contains material misstatements of fact, and is not proper, not itemized, and not verified. Strict compliance with the South Carolina Rules of Civil Procedure, statutory, and case law is required for

summary application. Defendants did not counterclaim thereby waiving it, if any. The Physician is not the Defendant. The matter herein is incidental to the underlying claim. Defendants have unclean hands, and the Plaintiff respectfully submits Defendant's *pro se*, so-called verified petition should be dismissed.

I. The failure to support the rule to show cause by a verified petition is a fatal defect.

The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). See sample Verification attached. Though captioned as "verified petition," defendant's *pro se* petition does not contain a verification and does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure. Moreover, the *pro se* petition is false and is disputed. It contains material misstatements of fact and is not itemized, verified, or proper. Strict compliance with the rules and statutes is required for summary application. The plaintiff respectfully submits defendant's *pro se*, so-called verified petition should be dismissed or stricken.

II. Defendants proposed order entered January 3, 2017, is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals and application of the rule of law.

Defendant's proposed order is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals. The Court of Appeals

has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal et al., *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. Defendant's brazen assertion that Defendants are somehow exempt from the South Carolina Appellate Court Rules and the South Carolina Court of Appeals characterizes the way Defendants have proceeded in this professional negligence action all along, i.e., the rules do not apply to them. Defendant's *pro se* unverified petition should be dismissed or stricken.

III. There is no jurisdiction due to pending Rule 60, SCRCP, Motion.

The pending Motion Pursuant to Rule 60, SCRCP, was filed before Defendant's unverified, false petition and is pertinent thereto. Pursuant to Rule 79(e), SCRCP, Petitioner requests hearing on that motion. There is no jurisdiction due to pending Rule 60, SCRCP, Motion. Even assuming jurisdiction, resolution of the Rule 60, SCRCP, Motion as a prerequisite is reasonable. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const.

art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

IV. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment.

This matter is incidental to the case and does not constitute a traditional money judgment. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. Summary application applies to traditional judgments where the party has been afforded the right to trial by jury. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (*to show cause*), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). Defendants did not counterclaim, thereby waiving any. The Physician is not the Defendant, and the matter herein is incidental. Defendants *pro se*, unverified, false petition should be dismissed.

V. A novel question is raised of constitutionality of summary application by rule to show cause to amended S.C. Code Section 15-36-10 and/or incidental matters.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of the right to trial by jury. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, deprivation of right to full and fair hearing at trial by jury, deprivation of right to neutral fact-finder where the scales of justice are tipped in favor of

untrustworthy Defendants who are officers of the court, and the amended S.C. Code Section 15-36-10 statute's reasonable attorney standard is not reasonable notice to the layperson or affected parties. Accordingly, the statute is null and void, and Defendants summary application should be dismissed. *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

VI. A novel question is raised of constitutionality of summary application by rule to show cause in amended S.C. Code Section 15-36-10 and/or incidental matters due to denial of due process and lack of determination on ability to pay.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of due process including but not limited to failure to determine reasonableness and ability to pay. *See Turner v. Rogers*, 564 U.S. 431 (2011). The Physician asserts there was no counterclaim, and even assuming there was, Defendants waived it. The Physician is not the Defendant. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, denial of due process and failure to determine reasonableness and ability to pay. Accordingly, summary application by rule to show cause is not applicable and/or is unconstitutional and should be dismissed. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront

and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

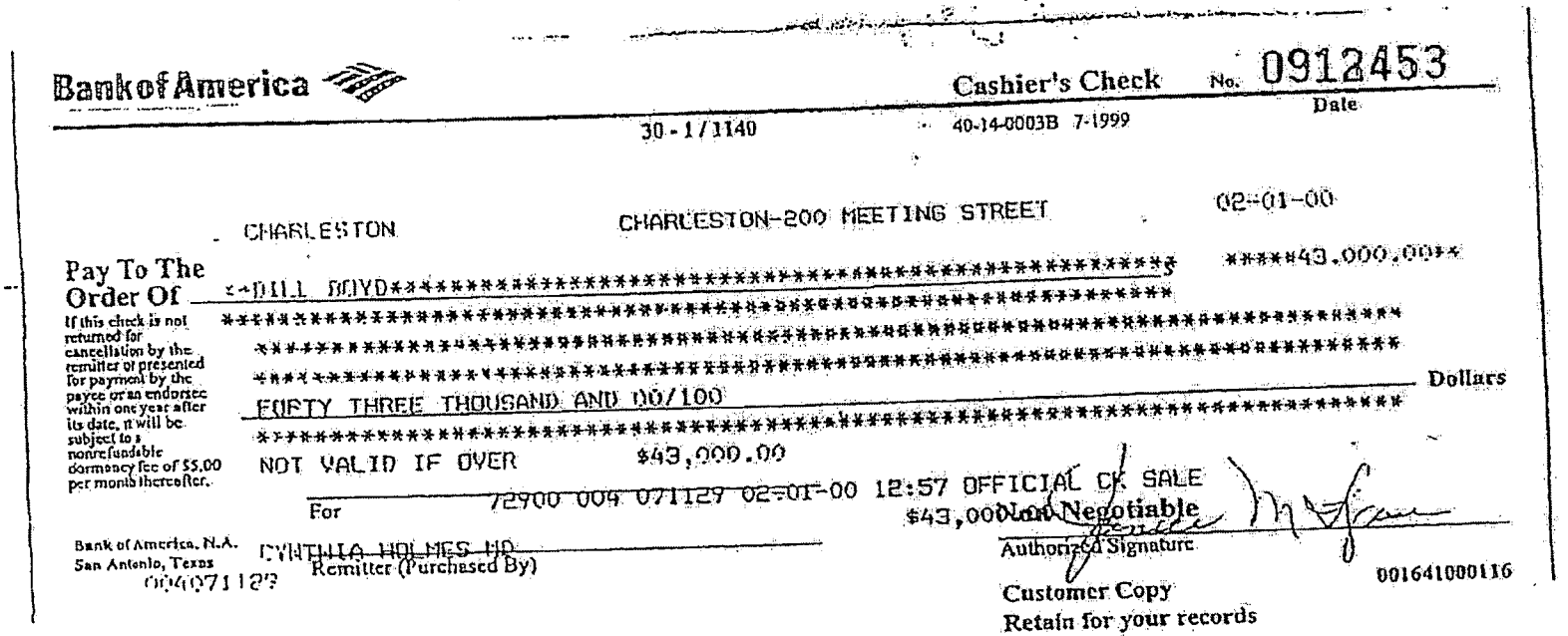
CONCLUSION

This Motion is based on constitutional (federal and State), statutory, and case law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned requests that defendants comply with the Rules of Court prohibiting ex parte contacts by forwarding hard copy of any and all communication with the Court regarding this matter whether electronic, fax, email, verbal, or other, and the plaintiff respectfully requests this Honorable Court grant this motion.

Respectfully submitted,

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010



Bank of America

Cashier's Check No. 0912453

30-1/1140 40-14-0003B 7-1999 Date

CHARLESTON CHARLESTON-200 MEETING STREET 02-01-00

Pay To The Order Of **DILL BOYD** $ *****43,000.00**

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NOT VALID IF OVER $43,000.00

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by Ed Boyd

FOR DEPOSIT ONLY Ed Boyd Atty.
SINKLER & BOYD, P.A.
DO NOT WRITE, STAMP OR PLACE ANY MARKS BELOW THIS LINE
DEPOSITORY BANK ENDORSEMENT

ENDORSE CHECK HERE

x For Deposit Only
Acct of SINKLER & Boyd, P.A.
by Bill Boyd
FOR DEPOSIT ONLY Boyd P.A.
SINKLER & BOYD P.A.
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STATE OF SOUTH CAROLINA)
) VERIFICATION
County of _____)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

_____

SWORN to and subscribed before me this _____ day of _____, _____.

_____ (L.S.)
Notary Public

My Commission Expires: _____

FILED

JUN - 2 2000

LARRY W. PROPES, CLERK
CHARLESTON, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D.,

Plaintiff,

v.

Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc.,

Defendants.

C.A. # 2:99-833-23

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).[1]

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED;

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 14, 2000

2

[1] Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

J. DOE (C. HOLMES)
PLAINTIFF
vs.

MANTON GRIER, JAMES Y. BECKER, HAYNSWORTH SINKLER & BOYD, PA,
DEFENDANTS

PARTIAL
TRANSCRIPT OF RECORD

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

A P P E A R A N C E S:

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE -- ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

C. Holmes, M.D.,)
Appellant,)
)
vs.)
)
Haynesworth Sinkler Boyd, P.A.,)
successor to Sinkler & Boyd, P.A.,)
Manton Grier, and James Y. Becker,)
Respondents.)

LOWER COURT NO. 02-CP-10-1448
AND AFTER CHANGE OF VENUE NO. 07-CP-10-1444

APPELLATE CASE NO. 2010 - 154986

* *

TRANSCRIPT OF APPEAL HEARING

* *

BEFORE THE SOUTH CAROLINA SUPREME COURT
THE HONORABLE JEAN HOEFER TOAL, CHIEF JUSTICE
THE HONORABLE COSTA M. PLEICONES, JUSTICE
THE HONORABLE KAYE G. HEARN, JUSTICE
THE HONORABLE JOHN W. KITTREDGE, JUSTICE
THE HONORABLE DONALD W. BEATTY, JUSTICE

CHALMERS JOHNSON: Thank you. Chief Justice Toal, Justices of the Supreme Court, my name is Chalmers Johnson. I'm here, um, representing Dr. Cynthia Holmes today. In this appeal, we're asking, uh, that the court overturn an order which granted a directed verdict against her on claims of professional negligence and others that were against her former attorneys, Mr. Grier, Mr. Becker, and Haynesworth, um, Sinkler & Boyd. We'll also be addressing an order which granted sanctions after that trial against Dr. Holmes for instituting a frivolous lawsuit.

CHIEF JUSTICE JEAN TOAL: Go ahead.

CHALMERS JOHNSON: Thank you, Your Honor. Directed verdict should not have been granted in this case. Um, I know we have a huge record on appeal, and just a -- a laundry list of issues, which I hate to do in any appeal, but if I do nothing else today, it's my goal to focus your attention on fifty pages of the record on appeal, and on one piece of extra testimony from the trial. The particular pages that I hope that you will pay attention to are pages 1509 to 1560. These fifty pages, which are exhibits from the trial, present a succinct chronology of events and provide evidence of a duty, a negligent breach of that duty, damages, and causation.

JUSTICE JOHN KITTREDGE: I don't want to interrupt the flow of your argument, Mr. Johnson, but why isn't this case over on the statute of limitations issue?

CHALMERS JOHNSON: Your Honor, the statute of limitations issue only applies to the two individual defendants. So even if it was found that they were not ---

JUSTICE JOHN KITTREDGE: Well, as to them?

CHALMERS JOHNSON: Okay. As to them, Your Honor, our argument is that they availed themselves of the court to the point where they should have -- the court should have considered to have personal jurisdiction over them within the time period of the ---

JUSTICE JOHN KITTREDGE: So ---

CHALMERS JOHNSON: --- statute of limitations.

JUSTICE JOHN KITTREDGE: So coming -- coming to court and submitting to the jurisdiction of the court waives a party's ability to assert affirmative defenses?

CHALMERS JOHNSON: It doesn't necessarily waive the right

to af-, assert affirmative defenses, Your Honor, but as to personal jurisdiction and when the court has personal jurisdiction, I don't think that South Carolina recognizes a special appearance, and especially when you go so far as to actually defend the case at trial and obtain a directed verdict. You've certainly availed yourself of the court, shown up, and, um, evidenced your receipt of notice of the case and your time to prepare.

JUSTICE JOHN KITTREDGE: I -- I understand that in the context of being able to subsequently assert a jurisdictional challenge, but I don't understand how an appearance forecloses a party's ability, uh, to assert affirmative defenses, including statute of limitations.

CHALMERS JOHNSON: Uh, it wouldn't, Your Honor. The only way -- the only argument I have on that is to come at it from a personal jurisdiction standpoint, and I think you put your finger right on it; I won't belabor the point any. Um, the best argument I can come up with is that they've availed themselves of the court. I think that the court had personal jurisdiction over them from the very beginning, which would have been within the statute of limitations. Um, and that's -- that's how I come at that, Your Honor.

CHIEF JUSTICE JEAN TOAL: Let's go to what you would like us to focus on, pages, uh, 1509 to 1560.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: They include, as it looks like to me from just a brief look, the initial engagement letter, uh, the addenda, uh, uh, to that engagement letter, uh, and certain other pleadings surrounding the order of Judge Duffy.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: Uh, is that correct?

CHALMERS JOHNSON: That's correct, Your Honor.

CHIEF JUSTICE JEAN TOAL: Alright, sir. Uh, go forward and tell us what is succor about those ---

CHALMERS JOHNSON: Thank you.

CHIEF JUSTICE JEAN TOAL: --- documents.

CHALMERS JOHNSON: Here's what I want to focus on. This case is -- you know -- we're actually in front of you in this

very case later this year, I believe, or next year. Um, it has involved a lengthy process, with lots of different things happening. This case, if we want to actually make a case that Judge Houston should have seen, was about the injunction. Dr. Holmes was able to, um, obtain and injunction, which allowed her to continue with doing surgeries.

JUSTICE KAYE HEARN: And she did no surgery during the course of that injunction, isn't that correct?

CHALMERS JOHNSON: Correct, Your Honor. The junction was granted at the end of November, and the, uh, injunction was reversed in January. So ---

CHIEF JUSTICE JEAN TOAL: And, of course, why, the standard for keeping such an injunction in place, uh, is both the, uh, harm that might ensue, uh, as, uh, before the case is tried, as well as likelihood of success on the merits, and I guess that's where, if you can get past the fact that, uh, she's, uh, not demonstrated that her practice was really hurt because she didn't admit anybody, uh, you've got the, uh, ruling by Judge Duffy on the merits, uh, affirmed by the Fourth Circuit, cert declined by the Supreme Court, and then fully explicated again by Judge Pieper in his order dismissing the antitrust, uh, uh, uh, and allied, uh, causes, uh, in

State Court. Those are the causes -- those two federal causes are those that would support that injunction. Uh, so if on the merits, according to the various judges I recited, she is not entitled to any relief, then what Haynesworth, Becker, and Grier did or did not do in pursuing the preliminary junction really doesn't make any difference, does it?

CHALMERS JOHNSON: I think it makes -- I think that is the case, Your Honor. Uh, not -- not that you're correct, but I think it is our case that she lost the injunction and her damages ensued from that. You can ---

CHIEF JUSTICE JEAN TOAL: Well, I understand that, but the -- the -- it's not just that simple. Just because she lost the injunction doesn't mean she would be entitled to damage had she suffered any damages, and that's another big issue, as to whether this record discloses any damages, uh, uh, since she didn't admit any patients during the time she definitely had the injunction. Uh, it's arguable that she suffered no damages. Uh, if that -- but beyond all that, if she had suffered some damages in the sense that, uh, she had lost the opportunity to admit patients, if she wasn't entitled to the injunction in the first instance, how in the world does it make any difference that the preliminary injunction was dissolved?

CHALMERS JOHNSON: She was entitled to the injunction in the first instance. The judge ---

CHIEF JUSTICE JEAN TOAL: She really wasn't. Uh, that's the ruling that all the federal courts have made. The entitlement is not just because of, uh, harm, it's because you have a likelihood of success on the merits. As it develops, she had no likelihood of success on the merits.

CHALMERS JOHNSON: Your Honor, ---

CHIEF JUSTICE JEAN TOAL: None.

CHALMERS JOHNSON: Your Honor, I -- I respectfully disagree. The federal court only granted partial summary judgment. It dismissed the remainder of her state claims.

CHIEF JUSTICE JEAN TOAL: The state court claims are not involved with this preliminary injunction. The preliminary injunction is purely involved and is purely bottomed on the federal action, what you're talking about.

CHALMERS JOHNSON: Right, Your Honor. And at the end of this, um, set of papers, you'll see Judge Duffy, um, correctly

recognizes that -- I mean, this injunction had only been in place for about six or seven weeks. He collec-, correctly recognizes that Dr. Holmes had four surgeries scheduled for the next, uh, month or two, and he tell-, p-, tells her, "You better cancel your surgeries and do something about it." On the very next day, she gets her letter from the hospital cancelling all four surgeries.

CHIEF JUSTICE JEAN TOAL: Well, that -- of course that is what happened, but, again, what he also tells her very definitively is that she was never entitled to the injunction to begin with because her entitlement has to be bottomed on likelihood of success, and she did not have a viable cause of action for the federal causes.

CHALMERS JOHNSON: And, Your Honor, that's so, but she would have ---

CHIEF JUSTICE JEAN TOAL: Well, if that's so, end of conversation.

CHALMERS JOHNSON: She would have had the four surgeries done and collected the money for them. I think she has damages.

CHIEF JUSTICE JEAN TOAL: No, sir. That -- the fact that she might or might not have is not the inquiry. The inquiry on damages is going to be whether she was entitled to it, not whether she could have gotten a windfall if it had stayed in place. Her entitlement is based on the legitimacy of that federal action.

CHALMERS JOHNSON: Your Honor, I think her entitlement to perform the surgeries was based on the fact that the judge did grant her the injunction. The reason that the injunction was lost is why this case shouldn't have been thrown out.

CHIEF JUSTICE JEAN TOAL: Well, I -- I think we understand your position on that.

JUSTICE JOHN KITTREDGE: Let me -- let me use that comment to ask you about this professional negligence claim. What should her attorneys have done differently? How should they have performed differently that would have likely changed the results?

CHALMERS JOHNSON: They should have spent their time between the injunction and the loss of the injunction responding to discovery, which was already overdue at the time the discov-, the injunction was granted, and listening to

Judge Duffy, who told them that they better stick to the scheduling order, which they didn't, and that's why Judge Duffy undid the injunction, and they should not have generated thirty-five pages of dickering with their client about fee renegotiations, including ---

CHIEF JUSTICE JEAN TOAL: Well, she's the one that generated that by taking the completely unsubstantiated position by anything that's in this record that she had an entitlement to a contingent fee arrangement. That was the source of the disputation, and every piece of written material here, except a letter she sent saying, uh, uh, that she had received a phone conversation different, which is just another piece of self-serving information on her part. There is no independent writing between the parties that supports anything other than a fee-based arrangement.

CHALMERS JOHNSON: Actually, Your Honor, uh, one of those letters that I have referred you to, Haynesworth actually offers a contingency fee agreement.

CHIEF JUSTICE JEAN TOAL: Which one is that? Show me specifically in the record.

CHALMERS JOHNSON: Let me find it, Your Honor. It is

letter #3, January 10th, 2000. Page 1523. In this one, Haynesworth asked for $3,000 in advance for costs, $40,000 advance fee for attorneys fees that will cover until the end of trial, ---

CHIEF JUSTICE JEAN TOAL: No, the -- that $43,000 was not advanced -- covered the end of trial. They had suffered a good deal of lost fees that she had never paid them, and the $43,000, as I understand it, was an attempt to calculate what was past due, and they said, "We will take this $43,000, we will not insist in anything more until the end of trial," but the arrangement is a fee-based one. Where in this letter does it talk about contingent fees?

CHALMERS JOHNSON: They mention in the letter, on page 1523, they offer -- if the case is -- if they recover over $150,000, Haynesworth wants twenty percent of that. So they actually offer her a contingent fee at some point.

CHIEF JUSTICE JEAN TOAL: Alright. But, again, sh-, show me exactly where you are.

JUSTICE COSTA PLEICONES: You're on 1523?

CHIEF JUSTICE JEAN TOAL: Yes, sir. Show -- show me ---

CHALMERS JOHNSON: Yes, Your Honor. Let me flip ---

CHIEF JUSTICE JEAN TOAL: --- exactly where you are.

CHALMERS JOHNSON: --- to the page myself.

CHIEF JUSTICE JEAN TOAL: I'm looking straight at 1523, and I no-, notice in the second paragraph, "We have clarified, and you understand, that we are not currently representing you on a contingent fee basis. We explored and considered that possibility, but the nature of your case precludes this as a viable option." That's in the -- and then they repeat that, "For all business actio-, aspects of our legal representation, the terms of our engagement letter dated May the 5th, 1998, will control, except that they may be modified by a subsequent writing." Now, show me the ---

JUSTICE DONALD BEATTY: You're on 1526?

CHALMERS JOHNSON: Correct, Your Honor; sorry. It was the end of that letter. I -- I apologize. I wrote down the beginning of the letter to mark it for myself. It starts with the, "With this narrowed focus of discovery and legal claims," underlined, and at the end they say, "Haynesworth will receive ---"

CHIEF JUSTICE JEAN TOAL: "We agree to limit or cap your legal fees through the conclusion of the trial at $40,000 in additional fees."

CHALMERS JOHNSON: Correct. So that was the advanced ---

CHIEF JUSTICE JEAN TOAL: "That's a cap ---

CHALMERS JOHNSON: --- payment.

CHIEF JUSTICE JEAN TOAL: "--- on additional fees to try the case. It is possible that your additional legal fees will be less than that amount, but we can't guarantee it. In the event that any recovery of damages through settlement of trial exceeds $150,000 exclusive of a fee award by the court, you agree that Sinkler & Boyd will receive twenty percent of the excess recovery in addition to its fees as set forth above."

CHALMERS JOHNSON: That's a contingency fee, Your Honor.

CHIEF JUSTICE JEAN TOAL: Right. Now, uh, where did she sign accepted?

CHALMERS JOHNSON: She did not. The question that Your Honor posed to me, in -- in fact, I think stated to me, was

that there was no evidence whatsoever that there was any discussion of a contingency fee.

CHIEF JUSTICE JEAN TOAL: No -- no. I did not say that, but if I -- if you think I did, let me clarify what I'm asking you. There is no evidence in this record that the parties reached a written agreement as to a contingent fee arrangement.

CHALMERS JOHNSON: Oh, that's correct.

CHIEF JUSTICE JEAN TOAL: That is correct, right?

CHALMERS JOHNSON: Correct.

CHIEF JUSTICE JEAN TOAL: Okay.

JUSTICE JOHN KITTREDGE: And at best, this is just a hybrid. I mean, uh, -- because in December, I think it was December 15th, they wrote a letter. Categorically said no contingency fee. This is, uh, -- shortly thereafter, apparently, communication back and forth, and to placate the client, um, they're still going to bill $40,000 up to through the conclusion of the trial and thereafter.

CHALMERS JOHNSON: Right. It's a very twisted set of events. If you read the letters that I've pointed to you, you can follow it. I actually had to do that on note cards to figure out where they were going with this, but it's a back and forth. She -- in the beginning, it's very clear. I'll just boil it down. She believed that they were going to have a contingency fee afterwards. She says that was based on a discussion with Becker. In the very first letter here, on the, 1509, Becker's writing her, saying, "I'm so sorry you misunderstood. What I was really telling you is that I would run a contingency fee by my partners and see if they would agree to it." But guess what, they didn't agree. Then you get in this big fight between the two of them, and guess what, the law firm spends all its time and energy and effort fighting with this client, trying to renegotiate its fees, while ---

CHIEF JUSTICE JEAN TOAL: Well, we get -- we get into this issue about the fee, uh, because of your assertion, uh, in answer to Justice, uh, Kittredge's question, "What should Haynesworth have done," that there shouldn't have been all this back and forth about fees. Well, there was a good deal of back and forth because of, uh, her, uh, beliefs, not supported by any of the written documents, uh, that they would have signed together about this contingent fee arrangement.

So you say that's one thing they should have done. Would that -- that -- that fuss back and forth, uh, uh, accomplished what in terms of making them liable for, uh, professional negligence?

CHALMERS JOHNSON: They missed every single deadline for discovery, and the judge withdrew the, uh, injunction as a result. They also failed to file a response to a motion to dissolve the injunction in federal court, which, if you don't file within fourteen days, the court considers that -- can consider that consent.

CHIEF JUSTICE JEAN TOAL: If she were never entitled to an injunction, why did that matter? That's, I think, what's being asked here.

CHALMERS JOHNSON: Your Honor, I -- the question -- I think the question is what could the jury have found because this is a directed verdict, and if there's some -- (indiscernible) of evidence to support my claim that a jury could have found that the reason she lost this injunction is because her attorneys were not doing their job and were dickering with her over fees instead, that we might have won this case, especially when John Freeman said ---

CHIEF JUSTICE JEAN TOAL: The jury would not have been permitted to make that finding if, in the first instance, she were never entitled to the injunction. Am I not right?

CHALMERS JOHNSON: I don't believe so, Your Honor. She got the injunction whether she was entitled to it or not. Her attorneys did a good job to get it. They should have kept it.

JUSTICE JOHN KITTREDGE: What's the effect, if any, maybe not, what -- is there any effect or relevance to the plaintiff not availing herself of the purposes for which the federal court issued the injunction in the first place?

CHALMERS JOHNSON: Your Honor, I fail to -- I don't understand why people keep saying that, that she never did any surgeries. It was only in place for six or seven weeks. She had four surgeries set for February and March.

CHIEF JUSTICE JEAN TOAL: No, she never made any attempt until right at the end, uh, to -- when she was on a pro se status to set any surgeries. They weren't even -- those surgeries, uh, were set way at the end, uh, after Judge Duffy, uh, uh, had that status conference. Uh, uh, what she'd been advised is, uh, from what I understand the record to be, as soon as that injunction was obtained, she was advised by her

attorneys, "Immediately start scheduling some surgeries so that you will be able to show the court, uh, that, uh, uh, this is necessitous to keep in place." This thing was on a rocket docket, uh, she had not really put it -- put forth any substantial information about, uh, what it would take to get the preliminary injunction, so the advise was, "We've got this on a very hurried basis, you need to go on and schedule some surgeries." That's why it's being asked.

CHALMERS JOHNSON: And, Your Honor, the answer is page 1464, a letter of January 26th, the day after the preliminary injunction which dissolved from East Cooper Hospital specifically cancelling four scheduled surgeries. She must have had those surgeries scheduled before the preliminary injunction was dissolved, otherwise East Cooper wouldn't have sent her that letter dissolving them. Judge Duffy also recognizes that she had four at the hearing and tells her she's going to have to cancel them. I think there is sufficient evidence for the jury to find that she lost something. Thank you, Your Honors.

CHIEF JUSTICE JEAN TOAL: Alright. Mr. Johnson, you have been asked a lot of questions, and you have a lot of issues. Uh, I don't want you -- you, of course, are going to have some time on reply.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: Uh, but if there are some other things you'd like to say, briefly, by way of outlining your position, uh, in opposition to the summary judgment that was granted, uh, I don't want you to, uh, not highlight the significant things. I know they have a lot of issues, but they kind of, uh, focus in on what the jury could have found, as you're arguing it, so, uh, I want to let you conclude your beginning argument in a way that's satisfactory to you.

CHALMERS JOHNSON: And thank you, Your Honor. I very much appreciate that. Um, the issues that we've just discussed is exactly what I was hoping you would ask me about, um, and I've been able to set forth the arguments that I've wanted to about directed verdict because I think that's the crux of this entire case. The judge simply shouldn't have taken it away from the jury when it was right there.

CHIEF JUSTICE JEAN TOAL: Thank you, Mr. Johnson.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 07-CP-10-1444
	)	
J. Doe(CHolmes),	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
-vs-	)	
	)	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	)	
	)	
Defendants.	)	

FILED
2017 JAN 25 AM 11:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I hereby certify that a copy of the foregoing was timely forwarded to the presiding judge and was served on defendants' counsel of record via USPS, postage pre-paid:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated January 21, 2017

C. Holmes
PO Box 187
S.I., SC 29482
843.883.3010

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT CASE NO.: 07-CP-10-1444
J. Doe(CHolmes), Plaintiff, -vs- Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. Defendants.	NOTICE OF MOTION AND MOTION FOR SANCTIONS

FILED
2017 JAN 26 PM 2:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: Defendants and Defendants' Counsel

PLEASE TAKE NOTICE that the plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order for sanctions as to defendants and defendants' counsel pursuant to Rule 11, SCRCP, pursuant to S.C. Code Section 15-36-10, and/or pursuant to this Honorable Court's inherent authority regarding defendants' and/or defendants' counsel's false statements, misrepresentations, and *pro se* unverified petition made to this Honorable Court regarding order entered in this matter on January 13, 2016. Defendants and/or defendants' counsel knew or should have known the falsity of the statements. Despite knowing the statements

were false and/or misleading, defendants and/or defendants' counsel enticed this Honorable Court to rely on the material misstatements and thereby perpetrate fraud upon the Court. Moreover, Defendants blatantly and wrongfully attempt to "Judge shop" as another Circuit Court Judge has already signed the Order on January 3, 2017, and one Circuit Court Judge does not have the authority to overrule another Circuit Court Judge, thereby, voiding the unauthorized "Judge Shopping" second Order on January 13, 2017, due to, including but not limited to, lack of jurisdiction. Further, on information and belief, untrustworthy *pro se* Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that they had presented the same Order to another Judge who had already signed it. Defendants have unclean hands. This motion is based on grounds of defendants and/or defendants' counsel's wrongdoing and material misstatements, including but not limited to defendants' unverified *pro se* petition pursuant to statutory and case law, affidavit(s), and evidence to be presented at the motion hearing on this matter.

This motion will be based on the pleadings, discovery, proposed orders, and/or other documents regarding wrongdoing by defendants and/or defendants' counsel and affidavit(s) as well as Memorandum of Law.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 1/23/17

C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 07-CP-10-1444
	)	
J. Doe(CHolmes),	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
-vs-	)	
	)	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	)	
	)	
Defendants.	)	

FILED
2017 JAN 26 PM 2:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I hereby certify that a copy of the foregoing was timely forwarded to the presiding judge and was served on defendants' counsel of record via USPS, postage pre-paid:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated January 23, 2017

C. Holmes
PO Box 187
S.I., SC 29482
843.883.3010

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON J. Doe(CHolmes), Plaintiff, -vs- Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 07-CP-10-1444 NOTICE OF MOTION AND RULE 59(e), SCRCP, MOTION

FILED
2017 FEB -1 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

To Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order to alter or amend the order entered January 18, 2017, with notice postmarked January 20, 2017, and received January 28, 2017.

The Plaintiff respectfully makes this motion pursuant to Rule 59(e), SCRCP, regarding the order, and requests that all time limits be held in abeyance pending resolution of this motion. Defendants *pro se*, so-called verified petition is false and is disputed.

This case is a suit for professional negligence wherein the Federal District Court ruled that Defendants wrongfully failed to timely appeal Defendant's negligent loss of injunction resulting in damages, thereby committing malpractice. See attached Federal District Court Order.

At trial, Defendants failed to extend professional courtesy for Plaintiff's trial counsel, who was in out-of-state court, to appear. The trial proceeded at Defendant's self-serving insistence without opposing trial counsel. At trial, Professor John Freeman testified under oath before the jury that what Defendants did when they threatened to prejudice the case in order to extract fees was "unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that." See attached Trial Transcript excerpt of Professor John Freeman's testimony. A jury could and should reasonably find that the negligent and/or criminal acts are a breach of the standard of care. Despite the obvious questions of fact, the jury was denied the right to find the facts when directed verdict was wrongfully granted by a retired judge. Because retired judges have no support staff, the retired judge essentially allowed Malpractice Defendants to write their own order. Consequently, that order does not reflect the record or reality. Transcript available upon request. Moreover, Defendants materially fail to disclose differing findings by the appellate courts. See attached Transcript Excerpt of Oral Argument by the Physician's Trial Counsel who was unfairly denied the opportunity to appear at trial.

Thereafter, Defendants misrepresented that the wrong statute applied and filed a motion for sanctions. But for the unconstitutional retroactive application of the amended S.C. Code Section 15-36-10, we would not be here. Any well-trained Physician would and should adamantly object.

The South Carolina Rules of Court shall be construed to do substantial justice. Though no deadline was imminent, Defendants chose to mail a copy of the *pro se*, so-called verified petition to the Physician on December 19, 2016, just in time for the Christmas Holidays with family and friends. Defendants, bless their hearts, are real sweethearts. Defendant's *pro se* petition does not comply with the South Carolina Rules of Court. Moreover, the *pro se*, so-called verified petition is disputed,

contains material misstatements of fact, and is not proper, not itemized, and not verified. Strict compliance with the South Carolina Rules of Civil Procedure, statutory, and case law is required for summary application. Defendants did not counterclaim thereby waiving it, if any. The Physician is not the Defendant. The matter herein is incidental to the underlying claim. Defendants have unclean hands, and the Plaintiff respectfully submits Defendant's *pro se*, so-called verified petition should be dismissed or stricken.

I. One Circuit Judge has no power to change, alter, review, revise or reverse the action of another Circuit Judge

Rule 43(l), SCRCP , provides, "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." "This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st rule *(now Rule 43(l), SCRCP)* of the Circuit Courts, which declares that 'if any application for an order be made to any judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it **shall be revoked**'...(*A*) judgment of the Court of Common Pleas... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one Circuit judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis

supplied); *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). Defendants attempt to "Judge Shop." Further, on information and belief, untrustworthy pro se Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that the exact same Order on the exact same facts had already been adjudicated by another Circuit Court Judge. Untrustworthy *pro se* Defendants have unclean hands. Accordingly, the order entered January 18, 2017, "shall be revoked." See *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another.").

II. The failure to support the rule to show cause by verified petition is a fatal defect.

The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). See sample Verification attached. Though captioned as "verified petition," defendant's *pro se* petition does not contain a verification and does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure. Pursuant to Rule 9(i), SCRCP, verification of account is required and Rule 11(c), SCRCP, specifies that the verification or affidavit shall be sworn to or affirmed before an officer authorized to administer oaths. *BB&T v. Fleming*, 360 S.C. 341, 601 S.E.2d 540 (2004). Further, when a motion is to be supported by affidavit or sworn itemized statement, it "SHALL be served with the motion." Rule 6(d), SCRCP. Moreover, the *pro se* petition is false and is disputed. It contains material misstatements of fact and is not itemized, verified, or proper. Strict compliance with the rules and statutes is required for summary application. The plaintiff respectfully submits defendant's *pro se*, so-called verified petition should be dismissed or stricken.

III. Defendants proposed order entered January 3, 2017, is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals and application of the rule of law.

Defendant's proposed order is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal et al., *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. Defendant's brazen assertion that Defendants are somehow exempt from the South Carolina Appellate Court Rules and the South Carolina Court of Appeals characterizes the way Defendants have proceeded in this professional negligence action all along, i.e., the rules do not apply to them. Defendant's *pro se* unverified petition should be dismissed or stricken.

IV. There is no jurisdiction due to pending Rule 60, SCRCP, Motion.

The pending Motion Pursuant to Rule 60, SCRCP, was filed before Defendant's unverified, false petition and is pertinent thereto. Pursuant to Rule 79(e), SCRCP, Petitioner requests hearing on that motion. There is no jurisdiction due to pending Rule 60, SCRCP, Motion. Even assuming jurisdiction, resolution of the Rule 60, SCRCP, Motion as a prerequisite is reasonable. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

V. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment.

This matter is incidental to the case and does not constitute a traditional money judgment. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. Summary application applies to traditional judgments where the party has been afforded the right to trial by jury. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (*to show cause*), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). Defendants did not counterclaim, thereby waiving any. The Physician is not the Defendant, and the matter herein is incidental. Defendants *pro se*, unverified, false petition should be dismissed.

VI. A novel question is raised of constitutionality of summary application by rule to show cause to amended S.C. Code Section 15-36-10 and/or incidental matters.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of the right to trial by jury. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, deprivation of right to full and fair hearing at trial by jury, deprivation of right to neutral fact-finder where the scales of justice are tipped in favor of untrustworthy Defendants who are officers of the court, and the amended S.C. Code Section 15-36-10 statute's reasonable attorney standard is not reasonable notice to the layperson or affected parties. Accordingly, the statute is null and void, and Defendants summary application should be dismissed. *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

VII. A novel question is raised of constitutionality of summary application by rule to show cause in amended S.C. Code Section 15-36-10 and/or incidental matters due to denial of due process and lack of determination on ability to pay.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of due process including but not limited to failure to determine reasonableness and ability to pay. *See*

Turner v. Rogers, 564 U.S. 431 (2011). The Physician asserts there was no counterclaim, and even assuming there was, Defendants waived it. The Physician is not the Defendant. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, denial of due process and failure to determine reasonableness and ability to pay. Accordingly, summary application by rule to show cause is not applicable and/or is unconstitutional and should be dismissed. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

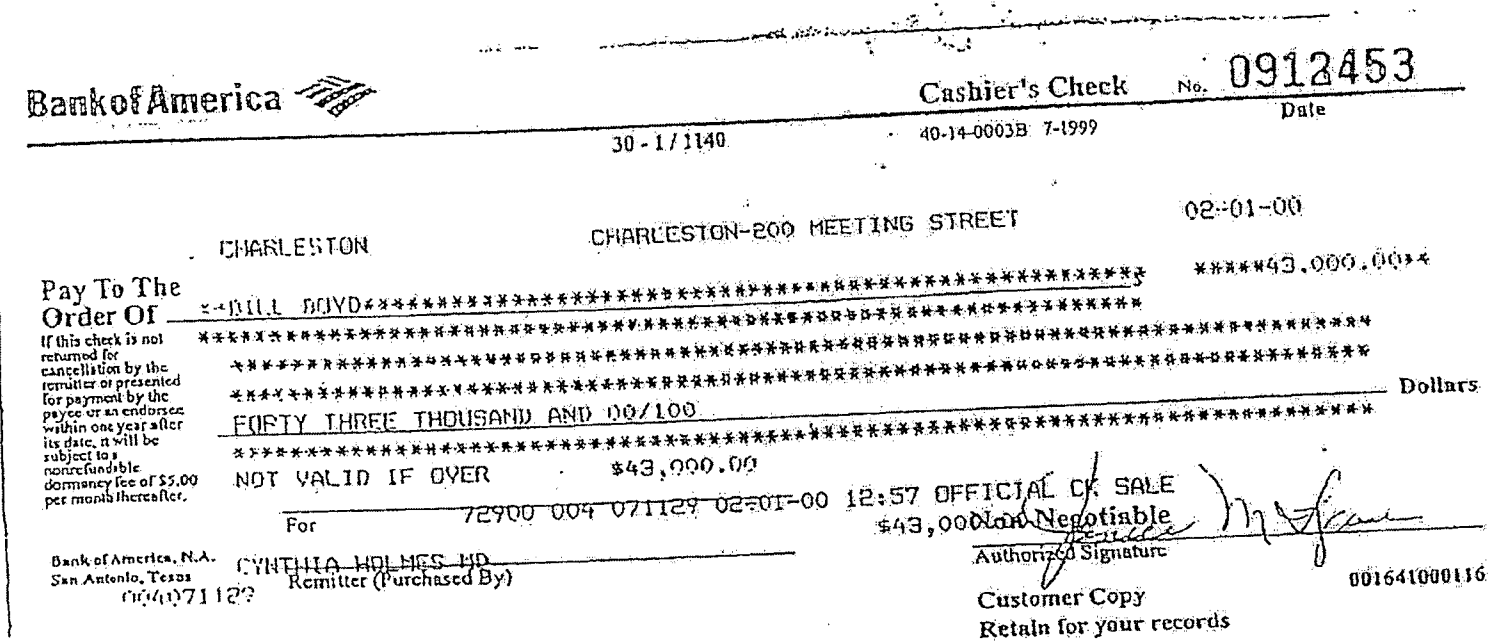
CONCLUSION

This Motion is based on constitutional (federal and State), statutory, and case law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned requests that defendants comply with the Rules of Court prohibiting ex parte contacts by forwarding hard copy of any and all communication with the Court regarding this matter whether electronic, fax, email, verbal, or other, and the plaintiff respectfully requests this Honorable Court grant this motion.

Respectfully submitted,

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010



Bank of America

Cashier's Check No. 0912453

30 - 1 / 1140 40-14-0003B 7-1999 Date

CHARLESTON CHARLESTON-200 MEETING STREET 02-01-00

Pay To The Order Of **BILL BOYD** $ *****43,000.00**

If this check is not returned for cancellation by the remitter or presented for payment by the payee or an endorsee within one year after its date, it will be subject to a nonrefundable dormancy fee of $5.00 per month thereafter.

FORTY THREE THOUSAND AND 00/100 Dollars

NOT VALID IF OVER $43,000.00

For 72900 004 071129 02-01-00 12:57 OFFICIAL CK SALE

$43,000.00 Non-Negotiable

Bank of America, N.A.
San Antonio, Texas
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CYNTHIA HOLMES HD
Remitter (Purchased By)

Authorized Signature

Customer Copy
Retain for your records

001641000116

ENDORSE CHECK HERE

X For Deposit Only
acct of SINKLER + BOYD, P.A.
by Bill Boyd

FOR DEPOSIT ONLY Bill Boyd Pres.
SINKLER & BOYD, P.A.

DEPOSITORY BANK ENDORSEMENT

ENDORSE CHECK HERE

x For Deposit Only
Acct of SINKLER & Boyd, P.A.
by Bill Boyd
FOR DEPOSIT ONLY Boyd P.A.
SINKLER & BOYD P.A.

DEPOSITORY BANK ENDORSEMENT

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of _____)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

_____

SWORN to and subscribed before me this _____ day of _____, _____.

_____ (L.S.)
Notary Public

My Commission Expires: _____

FILED

JUN - 2 2000

LARRY W. PROPES, CLERK
CHARLESTON, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D.,

Plaintiff,

v.

Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc.,

Defendants.

C.A. # 2:99-833-23

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).[1]

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED.

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 16, 2000

2

[1] Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

J. DOE (C. HOLMES)
PLAINTIFF
vs.
MANTON GRIER, JAMES Y. BECKER, HAYNSWORTH SINKLER & BOYD, PA,
DEFENDANTS

PARTIAL
TRANSCRIPT OF RECORD

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

A P P E A R A N C E S:

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE -- ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

C. Holmes, M.D.,)
Appellant,)
)
vs.)
)
Haynesworth Sinkler Boyd, P.A.,)
successor to Sinkler & Boyd, P.A.,)
Manton Grier, and James Y. Becker,)
Respondents.)

LOWER COURT NO. 02-CP-10-1448
AND AFTER CHANGE OF VENUE NO. 07-CP-10-1444

APPELLATE CASE NO. 2010 - 154986

* *

TRANSCRIPT OF APPEAL HEARING

* *

BEFORE THE SOUTH CAROLINA SUPREME COURT
THE HONORABLE JEAN HOEFER TOAL, CHIEF JUSTICE
THE HONORABLE COSTA M. PLEICONES, JUSTICE
THE HONORABLE KAYE G. HEARN, JUSTICE
THE HONORABLE JOHN W. KITTREDGE, JUSTICE
THE HONORABLE DONALD W. BEATTY, JUSTICE

CHALMERS JOHNSON: Thank you. Chief Justice Toal, Justices of the Supreme Court, my name is Chalmers Johnson. I'm here, um, representing Dr. Cynthia Holmes today. In this appeal, we're asking, uh, that the court overturn an order which granted a directed verdict against her on claims of professional negligence and others that were against her former attorneys, Mr. Grier, Mr. Becker, and Haynesworth, um, Sinkler & Boyd. We'll also be addressing an order which granted sanctions after that trial against Dr. Holmes for instituting a frivolous lawsuit.

CHIEF JUSTICE JEAN TOAL: Go ahead.

CHALMERS JOHNSON: Thank you, Your Honor. Directed verdict should not have been granted in this case. Um, I know we have a huge record on appeal, and just a -- a laundry list of issues, which I hate to do in any appeal, but if I do nothing else today, it's my goal to focus your attention on fifty pages of the record on appeal, and on one piece of extra testimony from the trial. The particular pages that I hope that you will pay attention to are pages 1509 to 1560. These fifty pages, which are exhibits from the trial, present a succinct chronology of events and provide evidence of a duty, a negligent breach of that duty, damages, and causation.

JUSTICE JOHN KITTREDGE: I don't want to interrupt the flow of your argument, Mr. Johnson, but why isn't this case over on the statute of limitations issue?

CHALMERS JOHNSON: Your Honor, the statute of limitations issue only applies to the two individual defendants. So even if it was found that they were not ---

JUSTICE JOHN KITTREDGE: Well, as to them?

CHALMERS JOHNSON: Okay. As to them, Your Honor, our argument is that they availed themselves of the court to the point where they should have -- the court should have considered to have personal jurisdiction over them within the time period of the ---

JUSTICE JOHN KITTREDGE: So ---

CHALMERS JOHNSON: --- statute of limitations.

JUSTICE JOHN KITTREDGE: So coming -- coming to court and submitting to the jurisdiction of the court waives a party's ability to assert affirmative defenses?

CHALMERS JOHNSON: It doesn't necessarily waive the right

to af-, assert affirmative defenses, Your Honor, but as to personal jurisdiction and when the court has personal jurisdiction, I don't think that South Carolina recognizes a special appearance, and especially when you go so far as to actually defend the case at trial and obtain a directed verdict. You've certainly availed yourself of the court, shown up, and, um, evidenced your receipt of notice of the case and your time to prepare.

JUSTICE JOHN KITTREDGE: I -- I understand that in the context of being able to subsequently assert a jurisdictional challenge, but I don't understand how an appearance forecloses a party's ability, uh, to assert affirmative defenses, including statute of limitations.

CHALMERS JOHNSON: Uh, it wouldn't, Your Honor. The only way -- the only argument I have on that is to come at it from a personal jurisdiction standpoint, and I think you put your finger right on it; I won't belabor the point any. Um, the best argument I can come up with is that they've availed themselves of the court. I think that the court had personal jurisdiction over them from the very beginning, which would have been within the statute of limitations. Um, and that's -- that's how I come at that, Your Honor.

CHIEF JUSTICE JEAN TOAL: Let's go to what you would like us to focus on, pages, uh, 1509 to 1560.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: They include, as it looks like to me from just a brief look, the initial engagement letter, uh, the addenda, uh, uh, to that engagement letter, uh, and certain other pleadings surrounding the order of Judge Duffy.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: Uh, is that correct?

CHALMERS JOHNSON: That's correct, Your Honor.

CHIEF JUSTICE JEAN TOAL: Alright, sir. Uh, go forward and tell us what is succor about those ---

CHALMERS JOHNSON: Thank you.

CHIEF JUSTICE JEAN TOAL: --- documents.

CHALMERS JOHNSON: Here's what I want to focus on. This case is -- you know -- we're actually in front of you in this

very case later this year, I believe, or next year. Um, it has involved a lengthy process, with lots of different things happening. This case, if we want to actually make a case that Judge Houston should have seen, was about the injunction. Dr. Holmes was able to, um, obtain and injunction, which allowed her to continue with doing surgeries.

JUSTICE KAYE HEARN: And she did no surgery during the course of that injunction, isn't that correct?

CHALMERS JOHNSON: Correct, Your Honor. The junction was granted at the end of November, and the, uh, injunction was reversed in January. So ---

CHIEF JUSTICE JEAN TOAL: And, of course, why, the standard for keeping such an injunction in place, uh, is both the, uh, harm that might ensue, uh, as, uh, before the case is tried, as well as likelihood of success on the merits, and I guess that's where, if you can get past the fact that, uh, she's, uh, not demonstrated that her practice was really hurt because she didn't admit anybody, uh, you've got the, uh, ruling by Judge Duffy on the merits, uh, affirmed by the Fourth Circuit, cert declined by the Supreme Court, and then fully explicated again by Judge Pieper in his order dismissing the antitrust, uh, uh, uh, and allied, uh, causes, uh, in

State Court. Those are the causes -- those two federal causes are those that would support that injunction. Uh, so if on the merits, according to the various judges I recited, she is not entitled to any relief, then what Haynesworth, Becker, and Grier did or did not do in pursuing the preliminary junction really doesn't make any difference, does it?

CHALMERS JOHNSON: I think it makes -- I think that is the case, Your Honor. Uh, not -- not that you're correct, but I think it is our case that she lost the injunction and her damages ensued from that. You can ---

CHIEF JUSTICE JEAN TOAL: Well, I understand that, but the -- the -- it's not just that simple. Just because she lost the injunction doesn't mean she would be entitled to damage had she suffered any damages, and that's another big issue, as to whether this record discloses any damages, uh, uh, since she didn't admit any patients during the time she definitely had the injunction. Uh, it's arguable that she suffered no damages. Uh, if that -- but beyond all that, if she had suffered some damages in the sense that, uh, she had lost the opportunity to admit patients, if she wasn't entitled to the injunction in the first instance, how in the world does it make any difference that the preliminary injunction was dissolved?

CHALMERS JOHNSON: She was entitled to the injunction in the first instance. The judge ---

CHIEF JUSTICE JEAN TOAL: She really wasn't. Uh, that's the ruling that all the federal courts have made. The entitlement is not just because of, uh, harm, it's because you have a likelihood of success on the merits. As it develops, she had no likelihood of success on the merits.

CHALMERS JOHNSON: Your Honor, ---

CHIEF JUSTICE JEAN TOAL: None.

CHALMERS JOHNSON: Your Honor, I -- I respectfully disagree. The federal court only granted partial summary judgment. It dismissed the remainder of her state claims.

CHIEF JUSTICE JEAN TOAL: The state court claims are not involved with this preliminary injunction. The preliminary injunction is purely involved and is purely bottomed on the federal action, what you're talking about.

CHALMERS JOHNSON: Right, Your Honor. And at the end of this, um, set of papers, you'll see Judge Duffy, um, correctly

recognizes that -- I mean, this injunction had only been in place for about six or seven weeks. He collec-, correctly recognizes that Dr. Holmes had four surgeries scheduled for the next, uh, month or two, and he tell-, p-, tells her, "You better cancel your surgeries and do something about it." On the very next day, she gets her letter from the hospital cancelling all four surgeries.

CHIEF JUSTICE JEAN TOAL: Well, that -- of course that is what happened, but, again, what he also tells her very definitively is that she was never entitled to the injunction to begin with because her entitlement has to be bottomed on likelihood of success, and she did not have a viable cause of action for the federal causes.

CHALMERS JOHNSON: And, Your Honor, that's so, but she would have ---

CHIEF JUSTICE JEAN TOAL: Well, if that's so, end of conversation.

CHALMERS JOHNSON: She would have had the four surgeries done and collected the money for them. I think she has damages.

CHIEF JUSTICE JEAN TOAL: No, sir. That -- the fact that she might or might not have is not the inquiry. The inquiry on damages is going to be whether she was entitled to it, not whether she could have gotten a windfall if it had stayed in place. Her entitlement is based on the legitimacy of that federal action.

CHALMERS JOHNSON: Your Honor, I think her entitlement to perform the surgeries was based on the fact that the judge did grant her the injunction. The reason that the injunction was lost is why this case shouldn't have been thrown out.

CHIEF JUSTICE JEAN TOAL: Well, I -- I think we understand your position on that.

JUSTICE JOHN KITTREDGE: Let me -- let me use that comment to ask you about this professional negligence claim. What should her attorneys have done differently? How should they have performed differently that would have likely changed the results?

CHALMERS JOHNSON: They should have spent their time between the injunction and the loss of the injunction responding to discovery, which was already overdue at the time the discov-, the injunction was granted, and listening to

Judge Duffy, who told them that they better stick to the scheduling order, which they didn't, and that's why Judge Duffy undid the injunction, and they should not have generated thirty-five pages of dickering with their client about fee renegotiations, including ---

CHIEF JUSTICE JEAN TOAL: Well, she's the one that generated that by taking the completely unsubstantiated position by anything that's in this record that she had an entitlement to a contingent fee arrangement. That was the source of the disputation, and every piece of written material here, except a letter she sent saying, uh, uh, that she had received a phone conversation different, which is just another piece of self-serving information on her part. There is no independent writing between the parties that supports anything other than a fee-based arrangement.

CHALMERS JOHNSON: Actually, Your Honor, uh, one of those letters that I have referred you to, Haynesworth actually offers a contingency fee agreement.

CHIEF JUSTICE JEAN TOAL: Which one is that? Show me specifically in the record.

CHALMERS JOHNSON: Let me find it, Your Honor. It is

letter #3, January 10th, 2000. Page 1523. In this one, Haynesworth asked for $3,000 in advance for costs, $40,000 advance fee for attorneys fees that will cover until the end of trial, ---

CHIEF JUSTICE JEAN TOAL: No, the -- that $43,000 was not advanced -- covered the end of trial. They had suffered a good deal of lost fees that she had never paid them, and the $43,000, as I understand it, was an attempt to calculate what was past due, and they said, "We will take this $43,000, we will not insist in anything more until the end of trial," but the arrangement is a fee-based one. Where in this letter does it talk about contingent fees?

CHALMERS JOHNSON: They mention in the letter, on page 1523, they offer -- if the case is -- if they recover over $150,000, Haynesworth wants twenty percent of that. So they actually offer her a contingent fee at some point.

CHIEF JUSTICE JEAN TOAL: Alright. But, again, sh-, show me exactly where you are.

JUSTICE COSTA PLEICONES: You're on 1523?

CHIEF JUSTICE JEAN TOAL: Yes, sir. Show -- show me ---

CHALMERS JOHNSON: Yes, Your Honor. Let me flip ---

CHIEF JUSTICE JEAN TOAL: --- exactly where you are.

CHALMERS JOHNSON: --- to the page myself.

CHIEF JUSTICE JEAN TOAL: I'm looking straight at 1523, and I no-, notice in the second paragraph, "We have clarified, and you understand, that we are not currently representing you on a contingent fee basis. We explored and considered that possibility, but the nature of your case precludes this as a viable option." That's in the -- and then they repeat that, "For all business actio-, aspects of our legal representation, the terms of our engagement letter dated May the 5th, 1998, will control, except that they may be modified by a subsequent writing." Now, show me the ---

JUSTICE DONALD BEATTY: You're on 1526?

CHALMERS JOHNSON: Correct, Your Honor; sorry. It was the end of that letter. I -- I apologize. I wrote down the beginning of the letter to mark it for myself. It starts with the, "With this narrowed focus of discovery and legal claims," underlined, and at the end they say, "Haynesworth will receive ---"

CHIEF JUSTICE JEAN TOAL: "We agree to limit or cap your legal fees through the conclusion of the trial at $40,000 in additional fees."

CHALMERS JOHNSON: Correct. So that was the advanced ---

CHIEF JUSTICE JEAN TOAL: "That's a cap ---

CHALMERS JOHNSON: --- payment.

CHIEF JUSTICE JEAN TOAL: "--- on additional fees to try the case. It is possible that your additional legal fees will be less than that amount, but we can't guarantee it. In the event that any recovery of damages through settlement of trial exceeds $150,000 exclusive of a fee award by the court, you agree that Sinkler & Boyd will receive twenty percent of the excess recovery in addition to its fees as set forth above."

CHALMERS JOHNSON: That's a contingency fee, Your Honor.

CHIEF JUSTICE JEAN TOAL: Right. Now, uh, where did she sign accepted?

CHALMERS JOHNSON: She did not. The question that Your Honor posed to me, in -- in fact, I think stated to me, was

that there was no evidence whatsoever that there was any discussion of a contingency fee.

CHIEF JUSTICE JEAN TOAL: No -- no. I did not say that, but if I -- if you think I did, let me clarify what I'm asking you. There is no evidence in this record that the parties reached a written agreement as to a contingent fee arrangement.

CHALMERS JOHNSON: Oh, that's correct.

CHIEF JUSTICE JEAN TOAL: That is correct, right?

CHALMERS JOHNSON: Correct.

CHIEF JUSTICE JEAN TOAL: Okay.

JUSTICE JOHN KITTREDGE: And at best, this is just a hybrid. I mean, uh, -- because in December, I think it was December 15th, they wrote a letter. Categorically said no contingency fee. This is, uh, -- shortly thereafter, apparently, communication back and forth, and to placate the client, um, they're still going to bill $40,000 up to through the conclusion of the trial and thereafter.

CHALMERS JOHNSON: Right. It's a very twisted set of events. If you read the letters that I've pointed to you, you can follow it. I actually had to do that on note cards to figure out where they were going with this, but it's a back and forth. She -- in the beginning, it's very clear. I'll just boil it down. She believed that they were going to have a contingency fee afterwards. She says that was based on a discussion with Becker. In the very first letter here, on the, 1509, Becker's writing her, saying, "I'm so sorry you misunderstood. What I was really telling you is that I would run a contingency fee by my partners and see if they would agree to it." But guess what, they didn't agree. Then you get in this big fight between the two of them, and guess what, the law firm spends all its time and energy and effort fighting with this client, trying to renegotiate its fees, while ---

CHIEF JUSTICE JEAN TOAL: Well, we get -- we get into this issue about the fee, uh, because of your assertion, uh, in answer to Justice, uh, Kittredge's question, "What should Haynesworth have done," that there shouldn't have been all this back and forth about fees. Well, there was a good deal of back and forth because of, uh, her, uh, beliefs, not supported by any of the written documents, uh, that they would have signed together about this contingent fee arrangement.

So you say that's one thing they should have done. Would that -- that -- that fuss back and forth, uh, uh, accomplished what in terms of making them liable for, uh, professional negligence?

CHALMERS JOHNSON: They missed every single deadline for discovery, and the judge withdrew the, uh, injunction as a result. They also failed to file a response to a motion to dissolve the injunction in federal court, which, if you don't file within fourteen days, the court considers that -- can consider that consent.

CHIEF JUSTICE JEAN TOAL: If she were never entitled to an injunction, why did that matter? That's, I think, what's being asked here.

CHALMERS JOHNSON: Your Honor, I -- the question -- I think the question is what could the jury have found because this is a directed verdict, and if there's some -- (indiscernible) of evidence to support my claim that a jury could have found that the reason she lost this injunction is because her attorneys were not doing their job and were dickering with her over fees instead, that we might have won this case, especially when John Freeman said ---

CHIEF JUSTICE JEAN TOAL: The jury would not have been permitted to make that finding if, in the first instance, she were never entitled to the injunction. Am I not right?

CHALMERS JOHNSON: I don't believe so, Your Honor. She got the injunction whether she was entitled to it or not. Her attorneys did a good job to get it. They should have kept it.

JUSTICE JOHN KITTREDGE: What's the effect, if any, maybe not, what -- is there any effect or relevance to the plaintiff not availing herself of the purposes for which the federal court issued the injunction in the first place?

CHALMERS JOHNSON: Your Honor, I fail to -- I don't understand why people keep saying that, that she never did any surgeries. It was only in place for six or seven weeks. She had four surgeries set for February and March.

CHIEF JUSTICE JEAN TOAL: No, she never made any attempt until right at the end, uh, to -- when she was on a pro se status to set any surgeries. They weren't even -- those surgeries, uh, were set way at the end, uh, after Judge Duffy, uh, uh, had that status conference. Uh, uh, what she'd been advised is, uh, from what I understand the record to be, as soon as that injunction was obtained, she was advised by her

attorneys, "Immediately start scheduling some surgeries so that you will be able to show the court, uh, that, uh, uh, this is necessitous to keep in place." This thing was on a rocket docket, uh, she had not really put it -- put forth any substantial information about, uh, what it would take to get the preliminary injunction, so the advise was, "We've got this on a very hurried basis, you need to go on and schedule some surgeries." That's why it's being asked.

CHALMERS JOHNSON: And, Your Honor, the answer is page 1464, a letter of January 26th, the day after the preliminary injunction which dissolved from East Cooper Hospital specifically cancelling four scheduled surgeries. She must have had those surgeries scheduled before the preliminary injunction was dissolved, otherwise East Cooper wouldn't have sent her that letter dissolving them. Judge Duffy also recognizes that she had four at the hearing and tells her she's going to have to cancel them. I think there is sufficient evidence for the jury to find that she lost something. Thank you, Your Honors.

CHIEF JUSTICE JEAN TOAL: Alright. Mr. Johnson, you have been asked a lot of questions, and you have a lot of issues. Uh, I don't want you -- you, of course, are going to have some time on reply.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 07-CP-10-1444
	)	
J. Doe(CHolmes),	)	
	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
-vs-	)	
	)	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	)	
	)	
	)	
	)	
	)	
	)	
Defendants.	)	
	)	

FILED
2017 FEB -1 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I hereby certify that a copy of the foregoing was timely forwarded to the presiding judge and was served on defendants' counsel of record via USPS, postage pre-paid:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated January 28, 2017

C. Holmes
PO Box 187
S.I., SC 29482
843.883.3010

Fax: 843.958.4434

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

C/A NO: 2007-CP-10-01444

FILED
2017 MAR -6 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO QUASH DISCOVERY

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, "Defendants") submit this memorandum in response to the "Notice of Motion and Motion" (the "Motion") filed by plaintiff Cynthia Holmes ("Holmes") to quash Defendants' Notice of Deposition of Holmes and Requests for Production[1]. Holmes' deposition was timely noticed for March 2, 2017, and Requests for Production were served on January 20, 2017. Copies of the Notice and Request for Production are attached as **Exhibit 1.**

Background

On April 6, 2007, Holmes commenced this malpractice action against Defendants arising from litigation against East Cooper Community Hospital ("East Cooper") following the revocation of Holmes' medical staff privileges at the hospital. Holmes' claims against the

[1] Defendants take the position that Holmes' Notice should be stricken or not allowed to be filed pursuant to the South Carolina Supreme Court's December 2, 2009 order, which bars Holmes from making *pro se* filings for matters related to her litigation against East Cooper Community Hospital ("East Cooper"). These supplemental proceedings arise from a malpractice action Holmes brought against Defendants based on their representation of Holmes during the East Cooper action. Accordingly, Defendants believe that Holmes' Motion should be stricken or not allowed to be filed. However, Defendants wish to document their position on the Motion in advance of the hearing on Defendants' Rule to Show Cause, set for March 10, 2017.

Defendants were dismissed in their entirety after protracted litigation, and the trial court issued an order of sanctions against Holmes in the amount of $200,000.00 (the "Judgment"). The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014. *See Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

In November 2016, the Defendants commenced formal efforts to collect the Judgment. Defendants filed a Verified Petition on January 3, 2017, to commence supplementary proceedings to determine whether Holmes has assets to apply toward satisfaction of the Judgment. On January 18, 2017, the Court issued a Rule to Show Cause, which is scheduled for a hearing on March 10, 2017.

In the meantime, Holmes filed two motions for sanctions, a Rule 59(e) motion, a Rule 60 motion, and a motion to dismiss, all of which attempt to set aside the Judgment and claim that Defendants have acted fraudulently in trying to collect the Judgments. On February 9, 2017, this Court entered an order striking all of Holmes' motions (the "Order"), due to a Supreme Court order prohibiting the clerks of court throughout South Carolina from accepting *pro se* filings by Holmes related to this and other cases arising from the suspension of her privileges at East Cooper River Hospital. Holmes subsequently filed a notice of appeal on February 19, 2017 appealing the Order. Holmes served this Motion on March 1, 2017.

Argument

First, Holmes argues that discovery in this case is stayed because of the Notice of Appeal. However, the Notice of Appeal is an improper appeal of an un-appealable interlocutory order and, accordingly, does not act to stay discovery proceedings in this Court. The law is well-settled that "[t[here are only four basic situations from which a party may appeal: (1) intermediate judgements, orders or decrees involving the merits, (2) orders affecting substantial

rights when such orders in effect determine the action and prevent a judgment form which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying, or refusing injunctions." *Crout v. South Carolina Nat'l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982). Here, the Order does not fall under any of these categories, as it does not terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, the only matter before this Court is Defendants' Rule to Show Cause. None of Holmes' motions, however, relate in any way to the Rule to Show Cause, but instead attempt to re-litigate the underlying malpractice action and frustrate Defendants' attempts to collect on the Judgment. Holmes' Notice, then, is an improper appeal, and discovery is not held in abeyance in this matter. Accordingly, this Court should deny Holmes' Motion and move forward with the Rule to Show Cause Hearing on March 10, 2017.

Second, Holmes argues that her deposition cannot be taken because it was already taken in the underlying malpractice action. Rule 30, SCRCP, does not apply to this matter because the supplemental proceedings constitute a separate case from the underlying malpractice action. Rule 30, SCRCP, provides that "[t]he deposition of any party or witness may only be taken one time in any case except by agreement of the parties through their counsel or by order of the court for good cause shown." Here, however, Holmes has not been deposed as part of these supplemental proceedings, which only concern the discovery of her assets to satisfy the Judgment. Rather, Holmes has only been deposed during the underlying malpractice litigation which, while being related to the supplemental proceedings, constitutes an entirely different action. As such, Rule 30 does not apply to shield Holmes from providing testimony at a deposition.

Third, Defendants' discovery requests are all related to the ongoing collection efforts, and are not duplicative, unnecessary, and unreasonable as Holmes claims. Rule 26, SCRCP, provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending litigation." Defendants' Notice of Deposition clearly states that the deposition will be used for either discovery purposes or the supplemental proceedings in this matter. Moreover, Defendants' Requests for Production of Documents all request that Holmes produce financial records, tax returns, insurance policies, records of real estate owned, and other similar financial documents. Given that the supplemental proceedings concern property Holmes owns that may be used to satisfy the Judgment, these requests are all relevant to the supplemental proceedings. Accordingly, Defendants' requests are proper under Rule 26, SCRCP, and this Court should deny Holmes' Motion.

Finally, Holmes' Motion, while masquerading as a motion related to the supplemental proceedings, is simply another attempt to re-open the malpractice action and frustrate the Defendants' lawful attempts to collect on their Judgment. The bulk of the Motion concerns grievances Holmes has with Defendants' alleged actions during the malpractice litigation, and is entirely unrelated to the supplemental proceedings before this Court. As such, the Motion is completely irrelevant to the matter before this Court since the malpractice action and the Judgment against Holmes is res judicata. The Judgment was affirmed by the South Carolina Supreme Court and Holmes' efforts to set it aside through various motions are frivolous at best. Because the actual purpose of this Motion is to challenge the Judgment and re-litigate the malpractice action, this Court should deny Holmes' Motion.

Conclusion

For the aforementioned reasons, Defendants request that this Court deny Holmes' Motion, and grant such other and further relief as may be just and proper.

Mary M. Caskey, SC Bar No: 76198
Haynsworth Sinkler Boyd, P.A.
Post Office Drawer 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
(803) 765-1243 (fax)

ATTORNEYS FOR DEFENDANTS

March 2, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	FOR THE NINTH JUDICIAL CIRCUIT
Cynthia Holmes, M.D., Plaintiff, vs. Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker Defendants.	C/A NO: 2007-CP-10-01444 **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO CYNTHIA HOLMES, M.D.**

TO: CYNTHIA HOLMES, M.D.:

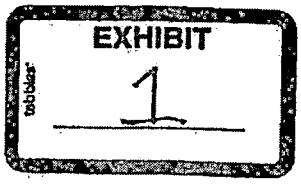
Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant, Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A (hereinafter referred to as "HSB"), requests that Plaintiff, Cynthia Holmes, M.D. (hereinafter referred to as "Holmes"), answer, in writing, the following requests for production and to produce and permit the undersigned to inspect and/or copy the following listed documents and/or materials:

DEFINITIONS AND INSTRUCTIONS

The following instructions apply to all requests:

a. All/Each. The terms "all" and "each" shall be construed as all and each.

b. And/Or. The connectives "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.



c. Number. The use of the singular form of any word includes the plural and vice versa.

d. Supplementation. These requests are continuing in nature and Holmes is obligated to supply HSB with new information concerning the issues raised by these requests whenever such information becomes known to Holmes.

e. Withheld Documents. In the event that a document called for by this request is withheld from production on the basis of a claim of privilege or is not produced for any reason, that document is to be identified as follows: preparer, author, addressee, each recipient, each person to whom the document was distributed or shown, date prepared, date transmitted (if different), date received, subject matter, number of pages, attachments and appendices, name, title and address of present custodian, and the basis asserted for nonproduction that is sufficiently particular to allow the Court to determine whether such privilege exists and has not been waived.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Copies of bank statements for all bank accounts (checking, savings, financial accounts, certificates of deposit, etc.) of Holmes from January 1, 2014 to the present.

2. Copies of financial statements from January 1, 2014 to the present.

3. Copies of all pay stubs, W-2's or other documents evidencing income of Holmes from January 1, 2014 to the present.

4. Copies of all stock certificates currently in the possession of Holmes.

5. Copies of all State and Federal Tax Returns from 2013 to the present.

6. Copies of all insurance policies for any real estate or personal property owned by Holmes.

7. Copies of all life insurance policies under which Holmes is the beneficiary or the insured.

8. Records of any real estate owned, either in whole or in part by Holmes since 2012.

9. Copies of all notes and mortgages associated with loans to which Holmes is a party.

10. Copies of all liens and judgments filed against Holmes.

Mary M. Caskey, SC Bar No: 76198
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
mcaskey@hsblawfirm.com
Telephone: (803) 779-3080

ATTORNEYS FOR DEFENDANTS

January 19, 2017

Columbia, South Carolina

DM: 4820678 v.1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker

Defendants.

C/A NO: 2007-CP-10-01444

CERTIFICATE OF SERVICE

I, Helen F. Harrington, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused a copy of the **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO CYNTHIA HOLMES, M.D.** to be placed in the U.S. Mail, postage prepaid, addressed to Cynthia Holmes at her last known address, which address is as follows:

Cynthia Holmes, M.D.
Post Office Box 187
Sullivans Island, SC 29482

this 20th day of January 2017.

HAYNSWORTH SINKLER BOYD, P.A.

Helen F. Harrington
Litigation Paralegal to Mary M. Caskey

Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	FOR THE NINTH JUDICIAL CIRCUIT
Cynthia Holmes, M.D., Plaintiff, vs. Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker Defendants.	C/A NO: 2007-CP-10-01444 **NOTICE OF DEPOSITION OF CYNTHIA HOLMES, M.D.**

TO: CYNTHIA HOLMES, M.D.:

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned attorney for the Defendant, Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A (hereinafter "Defendant") will, for discovery purposes and/or use at the supplemental proceeding scheduled in the captioned action, take the deposition of **Cynthia Holmes, M.D, on March 2, 2017 at 2:00 P.M., before a duly authorized Notary Public or other authorized person at the offices of Haynsworth Sinkler Boyd, P.A, 134 Meeting Street, 3rd Floor, Charleston, South Carolina.** The deposition will continue from day to day until completed.

You are requested to attend and take part as permitted by the South Carolina Rules of Civil Procedure.

Mary M. Caskey, S.C. Bar No: 76198
Haynsworth Sinkler & Boyd, P.A.
1201 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
Telephone: (803) 779-3080
Facsimile: (803) 765-1243
mcaskey@hsblawfirm.com

Attorneys for Defendants

January 20, 2017
Columbia, South Carolina
DM: 4820122 v.1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker

Defendants.

C/A NO: 2007-CP-10-01444

CERTIFICATE OF SERVICE

I, Helen F. Harrington, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused a copy of the **NOTICE OF DEPOSITION OF CYNTHIA HOLMES, M.D.** to be placed in the U.S. Mail, postage prepaid, addressed to Cynthia Holmes at her last known address, which address is as follows:

Cynthia Holmes, M.D.
Post Office Box 187
Sullivans Island, SC 29482

this 20th day of January 2017.

HAYNSWORTH SINKLER BOYD, P.A.

Helen F. Harrington
Litigation Paralegal to Mary M. Caskey

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

C/A NO: 2007-CP-10-01444

FILED
2017 MAR -6 PM 4:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated,* to all parties of record at the addresses shown below:

1. DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO QUASH DISCOVERY

Parties of Record

Cynthia Holmes, M.D.
PO Box 187
Sullivans Island, SC 29482

HAYNSWORTH SINKLER BOYD, P.A.

By: _____
June F. Fish
Legal Secretary to Mary M. Caskey

Date: March 2, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

FILED
2017 APR 13 PM 4:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the attached orders of the 9th Judicial Circuit Judge entered February 9, 2017, and March 14, 2017. Pursuant to Rule 203 and controlling precedent, including but not limited to *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15. 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017), *Turner v. Rogers*, 564 U.S. 431 (2011), and *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016), the Appellant timely files and serves Respondents. All parties required to be served have been served.

Dated 2.11.17

C. Holmes
POB 187
SI, SC 29482-0187
843.883.3010

Counsel of Record for Respondents:

Pro Se

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the attached orders of the 9th Judicial Circuit Judge entered February 9, 2017, and March 14, 2017. Pursuant to Rule 203 and 206. The original notices of appeal in this case were timely filed. The rulings of February 9 and March 14 denied the Appellant the right to participate, pro se, in her own case and order proceedings to continue against her after dismissing all of her attempts to file pro se. This appeal will include reference to *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017), *Turner v. Rogers*, 564 U.S. 431 (2011), and *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016).

Dated April 21, 2017

Chalmers C. Johnson
1029 Bay Street, #7
Port Orchard, WA 98366
(425) 999-0900
Attorney for the Appellant

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes

PLAINTIFF(S)

Haynesworth Sinkler Boyd, et al.

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2017 FEB -9 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

JUDGMENT INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate N/A in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C Holmes

-v-

Haynesworth, Sinkler, Boyd

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER:

2007-CP-10-1444

SUPPLEMENTAL PROCEEDING ORDER

FILED
2017 MAR 14 AM 8:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

A Hearing was held in the above captioned case on 3/10/17

_____ 1. No assets were discovered.

_____ 2. The Defendant agreed to pay _____

_____ 3. The hearing was not held because : _____

_____ a. the Defendant was not served and the hearing has been rescheduled for _____.

_____ b. the Defendant did not appear and a RTSC has been scheduled for _____.

_____ c. the parties requested the hearing be rescheduled for _____.

_____ d. the Plaintiff elected not to proceed.

X e. Holmes has 30 days to provide all documentation on assets to Haynesworth, If not provided, thereafter a Receiver will be appointed to review the assets available to satisfy the judgment & to recommend to court on how to proceed.

_____ 4. The supplemental proceedings is held open until _____ to include Sale of her home.

_____ 5. The supplemental proceedings is dismissed and canceled without prejudice. All Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed.

* No funds shall be transferred/asset values diminished.

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC
Dated: 3/10/17

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

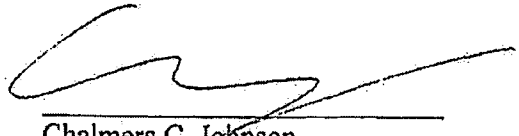
J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to M.M. Caskey on this date at 1201 Main St., 22nd flr., Columbia, SC 29201.

Dated April 21, 2017



Chalmers C. Johnson
Attorney for the Appellant

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

FILED
2017 JUN -5 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DEFENDANTS' MOTION FOR CONTEMPT AND SANCTIONS

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") hereby move this Court, pursuant to Rule 37, SCRCP, to issue and Order of Contempt to Plaintiff Cynthia Holmes ("Holmes") and impose sanctions against Holmes for the following reasons:

On April 6, 2007, Holmes commenced this malpractice action against Respondents arising from litigation against East Cooper Community Hospital ("East Cooper") after the revocation of Holmes' medical staff privileges at the hospital. Holmes' claims against the Respondents were dismissed in their entirety after protracted litigation, and the trial court issued an order of sanctions against Holmes in the amount of $200,000.00 (the "Judgment"). The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014. *See Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the litigation between Holmes and the Respondents, the South Carolina Supreme Court directed the Clerks of Court in South Carolina to refuse to accept any further filings from Holmes that were related in any way to the revocation of her medical staff

privileges at East Cooper unless the documents were filed by an attorney, other than Holmes, who was licensed to practice law in South Carolina. (See Order, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009).) Holmes' license was later suspended for a period of two years. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014). As of June 2, 2017, Holmes has not been reinstated.

In November 2016, the Respondents commenced formal efforts to collect the Judgment. Respondents filed a Verified Petition on January 3, 2017, to commence supplementary proceedings to determine whether Holmes has assets to apply toward satisfaction of the Judgment. On January 18, 2017, the Court issued a Rule to Show Cause, requiring Holmes to produce certain documents and appear, and a hearing was scheduled for March 10, 2017. At the hearing, the Court orally informed Holmes that it would not entertain any motions filed by Holmes, unless they were filed by a South Carolina licensed attorney. The Court further directed her to produce the documents requested by Defendants. On March 14, 2017, the Court filed its Supplemental Proceeding Order, commanding Holmes to provide documentation of assets to Defendants by April 14, 2017 (the "Order").

Upon learning that Defendants had issued a valid subpoena to Bank of America for documents in connection with a mortgage on her house, Holmes filed a motion to quash and submitted a copy of the motion to Bank of America. As a result, Bank of America discontinued processing the documents Defendants requested under their subpoena. A copy of the letter Bank of America wrote to Defendants regarding the motion is attached as **Exhibit A.** To date, because of Holmes' efforts, Defendants have been unable to determine the amount of the first mortgage on Holmes' primary residence, which appears to be a significant asset.

As of June 1, 2017, Defendants have only received copies of Holmes' 2014 and 2015 tax returns. Defendants wrote Holmes on April 12, 2017, informing her of their intention to move for an order of contempt and sanctions if she did not comply with the court's order, but to date have received no reply. However, since entry of the court's March 14 Order, Defendants have made numerous inappropriate filings with both the Circuit Court and Court of Appeals, and in all of them, she has stated that she will continue to contest the right of Defendants to seek assets to apply towards the Judgment, and continues to refuse to produce the information as ordered by the Court. None of these filings have been successful, but have merely been attempts by Holmes to frustrate Defendants' lawful efforts to collect on the Judgment.

WHEREFORE, Defendants pray that this Court declare Holmes to be in contempt for failing to fully produce her financial documents as required by the Order, and enter appropriate sanctions, including attorneys' fees and expenses incurred in bringing this Motion.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76198
Post Office Box 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
Facsimile No: (803) 765-1243

ATTORNEYS FOR DEFENDANTS

June 2, 2017
Columbia, South Carolina

Bank of America

April 19, 2017

HAYNSWORTH SINKLER BOYD, P.A.
MARY M. CASKEY
1201 MAIN STREET, 22ND FLOOR
COLUMBIA, SC 29201

Regarding reference number: D041917000003
Case name: JAMES HOLMES
Case number: 2007-CP-10-01444
Customer name:

HAYNSWORTH SINKLER BOYD, P.A.:
We've received a copy of a Motion to Quash pertaining to the above referenced subpoena.

What you need to know

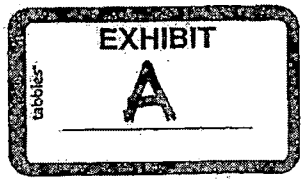
Please be advised that we've discontinued processing the documents requested under the subpoena until we receive a court order ruling on the Motion , further instructions signed by you and the opposing party, or both.

Questions?

If you have any questions, please call us at 213-580-0702. We're available Monday through Friday 9 a.m. to 5 p.m. local time. When contacting us regarding this notice, please use the reference number listed above.

Legal Order Processing

cc: C. HOLMES, MD, JD
P.O. BOX 187
SULLIVANS ISLAND, SC 29482
843-883-3010



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

CERTIFICATE OF SERVICE

FILED
2017 JUN -5 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Helen F. Harrington, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused a copy of **DEFENDANTS' MOTION FOR CONTEMPT AND SANCTIONS** to be placed in the U.S. Mail, postage prepaid, addressed to Plaintiff at her last known address, which address is as follows:

Cynthia Holmes, M.D.
Post Office Box 187
Sullivans Island, SC 29482

this 2nd day of June, 2017.

HAYNSWORTH SINKLER BOYD, P.A.

Helen F. Harrington
Litigation Paralegal

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

FILED
2017 JUL -5 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOTICE OF APPEAL

The Appellant timely appeals the attached order of the 9th Judicial Circuit Judge entered June 21, 2017, pursuant to Rule 203 and controlling precedent, including but not limited to *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017) and *Turner v. Rogers*, 564 U.S. 431 (2011). The issues involve a substantial right which must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016. Appellant timely files and serves Respondents. All parties required to be served have been served.

Dated 7/1/17

C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 001460
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the attached orders of the 9th Judicial Circuit Judge entered June 21, 2017, and June 23, 2017. Pursuant to Rule 203 and controlling precedent, the Appellant timely files and serves Respondents. This appeal will include reference to *Brooks v. CCCID and OID, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017), Turner v. Rogers, 564 U.S. 431 (2011), and Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see Toal *et al, Appellate Practice in South Carolina*, 3rd edition, 2016). All parties required to be served have been served.

Dated 7.29.17

C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

Counsel of Record for Respondents:

Mary Caskey
1201 Main St. #2200
Columbia, SC 29201

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

FILED
2017 SEP 29 PM 2:20
JULIE J. ARENDS
CLERK OF COURT

DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") hereby move this Court to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not have any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they request that they be dismissed as Petitioners, and that Haynsworth Sinkler Boyd, P.A. be the sole remaining petitioner in this action. There are no pending claims asserted by Plaintiff against Defendants in this matter. A proposed order is attached.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76198
Post Office Box 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
Facsimile No: (803) 765-1243
ATTORNEYS FOR DEFENDANTS

September 22, 2017

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

C. Holmes, Plaintiff, -vs- James Y. Becker, individually, M. M. Caskey, individually, and Haynsworth Sinkler Boyd, P.A., Defendants.	CIVIL ACTION NO.: 2:17-CV-2949-PMD-BM COMPLAINT JURY DEMAND

RECEIVED
USDC CLERK, CHARLESTON, SC
2017 NOV -1 AM 9:09

I. The Parties to This Complaint

A. The Plaintiff

C. Holmes
PO Box 187
Sullivans Island, Charleston
SC 29482-0187
843.883.3010

B. The Defendants

1. Haynsworth Sinkler Boyd, P.A.
Corporation
1201 Main St. #2200
Columbia, Richland
SC 29201
803.779.3080

2. James Y. Becker
1201 Main St. #2200
Columbia, Richland
SC 29201
803.779.3080

3. M.M. Caskey
1201 Main St. #2200
Columbia, Richland
SC 29201
803.779.3080

II. Basis for Jurisdiction

A. Federal question:

28 U.S.C. § 1331 and 28 U.S.C. § 1367
15 U.S.C. § 1692 *et seq.*(FDCPA) and S.C. Code § 37-5-101 *et seq.*(SCCPC)
S.C. Code § 39-5-10 *et seq.* (UTPA)
28 U.S.C. § 1654
U.S. Constitution: First, Fifth, Seventh, and Fourteenth Amendments

III. Statement of Claims

1. Defendants falsely claim money owed on a loan. Defendants wrongdoing violates 15 U.S.C. § 1692 *et seq.* and S.C. Code § 37-5-101 *et seq.*, including but not limited to, S.C. Code § 37-5-108. A complaint with the South Carolina Department of Consumer Affairs was timely filed prior to filing suit herein alleging violations of the South Carolina Consumer Protection Code (SCCPC).
2. Defendants falsely claim money owed on a loan. Defendants wrongdoing is a violation of law, including but not limited to, the Unfair Trade Practices Act (UTPA). Defendants wrongdoing adversely affects public interest. Defendants wrongdoing is capable of repetition and capable of evading judicial review.
3. Defendants wrongdoing is gross negligence with willful, wanton, and/or reckless disregard for the plaintiff and the plaintiff's rights. Defendants owed a duty of due care to the plaintiff. Defendants breached that duty causing damages, including but not limited to, special damages. Defendants wrongdoing is the direct and proximate cause of the damages.
4. Defendants wrongdoing is actionable as an equitable cause of action, including but not limited to, unjust enrichment and/or other equitable claims. Defendants falsely claim money owed on a loan and unjust enrichment thereby. Defendants wrongdoing is inequitable due to unjust enhancement and/or other equitable claims.
5. S.C. Code §15-36-10 is unconstitutional on its face and as applied herein, including but not limited to, the reasonable attorney standard which is not fair notice to the public or to parties. Moreover, see attached copy of state court order filed February 9, 2017, pursuant to unconstitutional retroactive application of the amended S.C. Code § 15-36-10 and in violation of 28 U.S.C. 1654 and Constitutional Amendments (First, Fifth, Seventh, and Fourteenth). The February 9, 2017, order falsely claims there was a hearing; however, there was no notice, no opportunity to be heard, no transcript, and no hearing, thereby denying due process, denying any record for meaningful judicial review, adversely affecting the public interest, evading judicial review, and capable of repetition.

IV. Relief

Defendants willfully, wantonly, and recklessly make the false claim there is money owed on a loan. Defendants wrongfully claim more than $300,000.00; Defendants knew or should have known the falsity of the claims. The Plaintiff respectfully prays that this Honorable Court grant relief against the Defendants for actual damages, special damages; costs of the action, attorneys fees, exemplary damages, punitive damages, and/or damages equal to the value of the unjust enrichment and/or benefit unjustly claimed by Defendants as determined by the trier of fact and for such other or further relief as may be just and proper.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11/1/17

Signature of Plaintiff

Printed Name of Plaintiff C Hodges

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes — PLAINTIFF(S)

Haynesworth Sinkler Boyd, et al. — DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2017 FEB -9 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate N/A in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

SCRCP Form 4C (10/2011)

Page 1 of 2

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge | 3062 Judge Code | Date 2/8/17

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-001717
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the previously submitted order of the 9th Judicial Circuit Judge entered June 23, 2017, and timely appeals the attached order entered September 29, 2017, with notice postmarked October 4, 2017, as well as previous orders necessarily affecting the judgment. *See SCDOT v. Faulkenberry*, 377 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999) (when a party timely files its notice of intent to appeal, the appellate court may review any intermediate order necessarily affecting the judgment). Pursuant to Rule 203 and controlling precedent, including but not limited to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016), the Appellant timely files and serves Respondents. All parties required to be served have been served.

Dated November 6, 2017

C. Holmes, M.D.
POB 187
Sull. Isd., 29482
843.883.3010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

2017 SEP 29 PM 2:20

CLERK OF COURT

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

This matter is before me on the motion of Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. As set forth in the motion, Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not claim any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they are dismissed as petitioners, and Haynsworth Sinkler Boyd, P.A. is the sole remaining petitioner in this action.

AND IT IS SO ORDERED.

The Honorable Mikell R. Scarborough
Charleston County Master-In-Equity

9/26, 2017
Charleston, South Carolina

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

C. Holmes,

Plaintiff,

-vs-

James Y. Becker, individually,
M. M. Caskey, individually, and
Haynsworth Sinkler Boyd, P.A.,

Defendants.

CIVIL ACTION NO.:
2:17-2949-PMD-BM

SUMMONS IN A CIVIL ACTION

To:

James Y. Becker
1201 Main St. #2200
Columbia, SC 29201

M.M. Caskey
1201 Main St. #2200
Columbia, SC 29201

Haynsworth Sinkler Boyd, P.A.
1201 Main St. #2200
Columbia, SC 29201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

C. Holmes
PO Box 187
Sullivans Island, SC 29482

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: February 20, 2018

Robin L. Blume
CLERK OF COURT

Chandra S. White

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

C. Holmes, Plaintiff, -vs- James Y. Becker, individually, M. M. Caskey, individually, and Haynsworth Sinkler Boyd, P.A., Defendants.	CIVIL ACTION NO.: 2:17-2949-PMD-BM NOTICE OF CONSTITUTIONAL QUESTION

The Plaintiff intends to challenge the constitutionality of the Amended S.C. Code Section 15-36-10 (2006) on its face and as applied.

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

C. Holmes, Plaintiff, -vs- James Y. Becker, individually, M. M. Caskey, individually, and Haynsworth Sinkler Boyd, P.A., Mikell R. Scarborough, in official capacity and, as indicated, individually re unofficial acts, Defendants.	CIVIL ACTION NO.: 2:17-2949-PMD-BM AMENDED COMPLAINT *Jury Demand*

I. The Parties to This Complaint

A. The Plaintiff

C. Holmes
PO Box 187
Sullivans Island, Charleston
SC 29482-0187
843.883.3010

B. The Defendants

1. Haynsworth Sinkler Boyd, P.A. (hereafter Hsb)
Corporation
1201 Main St. #2200
Columbia, Richland
SC 29201
803.779.3080

2. James Y. Becker
1201 Main St. #2200
Columbia, Richland
SC 29201
803.779.3080

3. M.M. Caskey
1201 Main St. #2200
Columbia, Richland
SC 29201
803.779.3080

4. Mikell Ross Scarborough
70 Chadwick Drive
Charleston, Charleston
SC 29407
843.763.1125

II. Basis for Jurisdiction

A. Jurisdiction is proper in this Court according to:

42 U.S.C. §§ 1983 and 1985
28 U.S.C. § 1331 and 28 U.S.C. § 1367
28 U.S.C. §§ 2201-2202
15 U.S.C. § 1692 *et seq.*(FDCPA) and S.C. Code § 37-5-101 *et seq.*(SCCPC)
S.C. Code § 39-5-10 *et seq.* (UTPA)
28 U.S.C. § 1654
U.S. Constitution: First, Fifth, Seventh, Eighth, and Fourteenth Amendments
South Carolina Constitution under Article I, §§ 2, 3, 4, and 9

III. Statement of Claims

Plaintiff complains of defendants and asserts the following:

Introduction

1. Plaintiff filed this lawsuit to enjoin defendants from violating fundamental rights including, but not limited to, the right to defend, to access the courts, to free speech, to petition, to represent oneself, to adequate record for meaningful judicial review on appeal, and the right to meaningful opportunity to be heard as guaranteed by Article I, §§ 2, 3, 4 and 9 of the South Carolina Constitution and Amendments I, V, VII, VIII, and XIV of the United States Constitution.

2. The defendants unlawfully interfered with plaintiff's fundamental rights including, but not limited to, the right to defend, to access the courts, to free speech, to petition, and to meaningful opportunity to be heard as guaranteed by the South Carolina Constitution and the United States Constitution.

3. Pursuant to 42 U.S.C. §§ 1983 and 1985, the action is for declaratory judgment, injunctive relief, and damages.

3. This action also includes request for damages brought by plaintiff for Defendants Becker, Caskey, and Hsb's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereafter FDCPA), S.C. Code § 37-5-101 *et seq.* (SCCPC), and S.C. Code § 39-5-10 *et seq.* (UTPA) which prohibit debt collectors and creditors from engaging in abusive, deceptive, and unfair practices. Plaintiff seeks to recover monetary damages for Defendants Becker, Caskey, and Hsb' s violations of the FDCPA, the SCCPC, and the UTPA and to have an Order or injunction issued by this Court preventing Defendants Becker, Caskey, and Hsb from continuing the violative behaviors.

4. All attached affidavits and exhibits are incorporated herein as part of this Amended Complaint by reference as if here set forth verbatim.

Parties

5. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

6. Plaintiff is a practicing physician over the age of 21 residing in Charleston County.

7. The above listed Defendant Scarborough is hailed into court in his individual capacity for unofficial and individual acts and in official capacity acting under color of state law for purposes of injunction and for damages pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and other claims. Defendant Scarborough is not a circuit court judge but is a referee/master for Charleston County and wrongfully issued the ex parte February 9, 2017, Order, a copy of which is attached, at the impermissible ex parte behest of legal malpractice Defendants Becker and Hsb, untrustworthy officers of the court, on or about February 9, 2017.

8. The above listed Defendant Becker is hailed into court in his individual capacity and as co-conspirator for purposes of injunction and for damages pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and other claims. Defendant Becker works full-time with Defendant Hsb. In *Dennis v. Sparks*, 449 U.S. 24, 28-29 (1980), the U.S. Supreme Court held that private parties who conspired with a judge to fix a case acted under color of law. On or about February 9, 2017, Defendant Becker directly or indirectly engaged in wrongful ex parte contact with Defendant Scarborough including, but not limited to, that referenced in the ex parte February 9, 2017, Order (attached), and directly and proximately caused or attempted to cause interference with plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

9. The above listed Defendant Caskey is hailed into court in individual capacity and as co-conspirator for purposes of injunction and for damages pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and other claims. Defendant Caskey works full-time in the debt collection department of defendant Hsb and regularly practices in the area of debt collection. In *Dennis v. Sparks*, 449 U.S. 24, 28-29 (1980), the U.S. Supreme Court held that private parties who conspired with a judge to fix a case acted under color of law. On or about February 9, 2017, Defendant Caskey directly or indirectly engaged in wrongful ex parte contact with Defendant Scarborough including, but not limited to, that referenced in the ex parte February 9, 2017, Order (attached), and directly and proximately caused or attempted to cause interference with plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

10. The above listed corporate Defendant Hsb is hailed into court through acts of its agents/employees and as co-conspirator for purposes of injunction and for damages pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and other claims. In *Dennis v. Sparks*, 449 U.S. 24, 28-29 (1980), the U.S. Supreme Court held that private parties who conspired with a judge to fix a case acted under color of law. On or about February 9, 2017, Defendant Hsb, by and through its employees/agents, directly or indirectly engaged in wrongful ex parte contact with Defendant Scarborough including, but not limited to, that referenced in the ex parte February 9, 2017, Order (attached), directly and proximately caused or attempted to cause interference with plaintiff's fundamental rights, equal

protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

11. This Court has subject matter jurisdiction pursuant to 42 U.S.C. §§ 1983, 1985 and the presence of federal and ancillary questions in this action.

12. The Court also has personal jurisdiction over all parties and venue is proper in the Charleston Division.

Events

13. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

14. The attached copy of correspondence dated November 1, 2016, from Defendants Becker, Caskey, and Hsb violates Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereafter FDCPA), S.C. Code § 37-5-101 *et seq.*(SCCPC), and S.C. Code § 39-5-10 *et seq.* (UTPA) in multiple ways and fails to comply with notice requirements. It falsely represents a loan and improper interest allegedly owed to defendants. Defendants Becker, Caskey, and Hsb falsely represented the character, amount, interest, and/or legal status of debt. (15 U.S.C. § 1692e(2)(A), 1692e(10)).

15. Defendants Becker, Caskey, and Hsb use instrumentalities of interstate commerce or the mails in a business with a department for the purpose of the collection of debts, and/or regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

16. Defendants Becker, Caskey, and Hsb falsely represented the character, amount, interest and/or legal status of debt, falsely misrepresented interest, and further overshadowed and obscured the disclosures required by 15 USC § 1692g(a) et seq. during the thirty-day dispute period. (15 U.S.C. §§ 1692e(2)(A), 1692e(5), 1692e(10), 1692g(b), S.C. Code § 37-5-101 *et seq.*(SCCPC), and S.C. Code § 39-5-10 *et seq.* (UTPA). See copy of correspondence dated November 1, 2016, attached hereto.

17. Defendants Becker, Caskey, and Hsb's actions constitute conduct highly offensive to a reasonable person, causing adverse effects on the public interest by abusive, unfair, deceptive, and/or false practices. The abusive, unfair, and deceptive practices are capable of repetition and capable of evading judicial review. As a result of Defendants' violations of the FDCPA, Defendants Becker, Caskey, and Hsb are liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

18. Plaintiff timely challenged defendant(s) petition, including but not limited to, false claims and lack of verification which is a fatal flaw. *Toyota of Florence, Inc. v. Lynch,* 314 S.C. 257, 442 S.E.2d 611, 617 (1994). On or about February 9, 2017, in order to avoid the merits and to essentially fix the

case, Defendants Becker, Caskey, and Hsb engaged in wrongdoing via direct or indirect ex parte contact with Defendant Scarborough, acting under color of state law, to interfere with plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution. Defendants Becker, Caskey, and Hsb's wrongdoing, directly or indirectly, caused Defendant Scarborough to issue the wrongful, ex parte February 9, 2017, Order, denying plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

19. Moreover, that Order wrongfully confiscated unearned filing fees for public use when Defendant Scarborough acted without jurisdiction in a non-judicial capacity to "scrub" already paid for, filed, and docketed matters such as timely pending Rule 60, SCRCP, motion for relief and meritorious challenges to Defendants Becker, Caskey, and Hsb's unverified petition and meritorious UTPA/ SCCPC/FDCPA claims. Defendants wrongfully denied plaintiff the state and Federal Constitutional and state and Federal statutory right to represent oneself. *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). After depriving the plaintiff of ability to defend, Defendants Becker, Caskey, and Hsb engaged in wrongdoing with untimely and unsubstantiated motion for sanctions of $2500.00 thwarting adequate record for meaningful judicial review on appeal and in violation of S.C. Code §37-2-413. The plaintiff is prejudiced thereby.

20. All defendants engaged in conspiracy for the purpose of depriving, either directly or indirectly, the plaintiff of the equal protection of the laws and of equal privileges and immunities under the laws; defendants have caused damages to the plaintiff and have deprived the plaintiff of rights and privileges of a citizen of the United States. Acts in furtherance of the conspiracy include, but are not limited to, the following: Defendant M. R. Scarborough, acting under color of state law, wrongfully issued the unconstitutional ex parte February 9, 2017, Order after the referenced ex parte contact; Defendant Becker, directly or indirectly, engaged in impermissible ex parte contact with Defendant Scarborough which directly and proximately caused the unconstitutional February 9, 2017, Order; that Order references unrelated matter pursuant to the inapplicable revised FPA with unrelated caption and different parties as provided ex parte by Defendants Becker and Caskey; Defendant Caskey, directly or indirectly, engaged in impermissible ex parte contact with Defendant Scarborough directly and proximately causing the unconstitutional February 9, 2017, Order.

21. Defendant Scarborough is not a circuit court judge with judicial immunity.

22. On information and belief, Defendant Scarborough has previously been cited for failing to provide required hearings, denying the most basic of due process rights (choosing to delegate a "hearing" to a non-judicial member of his staff). The public interest including, but not limited to, fundamental fairness supports exception to judicial immunity.

23. There is no immunity for wrongdoing which consists of non-judicial acts. The denial of right to defend and access to the courts herein is non-judicial on many levels.. As one example in this case, Defendant Scarborough applied an order in an unrelated case with different parties, a different caption, and different issues which is prohibited and therefore, non-judicial.

24. The wrongdoing occurred in Defendant Scarborough's individual capacity because the requisite fees were not paid, therefore, any action taken was unofficial, individual, and unauthorized. The record reflects legal malpractice defendants, untrustworthy officers of the court, were given a pass and not required to pay the official filing fees that a layperson or member of the public would be required to pay.

25. On the other hand, Defendant Scarborough's non-judicial acts include stealing and/or confiscating plaintiff's filing fees which are unaccounted for to date. Defendant Scarborough knew or should have known that he was not the Presiding Judge and therefore, had no jurisdiction to scrub the Rule 60, SCRCP, or other motion from the docket and no jurisdiction to confiscate and/or steal unearned filing fees.

26. Defendant Scarborough's wrongdoing involves impermissible ex parte communication which is non-judicial and, therefore, excepted. Additionally, it has an adverse impact on the public interest, appearance of impropriety, public perception, and impropriety in fact herein.

27. After risking life, limb, and liberty, the framers of the Constitutions and the founding Fathers of our country and our great State established the court system to protect our Constitutional rights, not deny them. Defendant Scarborough's wrongdoing and denial of Constitutional rights is decidedly non-judicial by denying the right to defend, right to access the courts, and to file in perpetuity. A copy of his February 9, 2017, Order is attached which demonstrates it is over broad, not supported by the record, and not time-limited. Accordingly, non-judicial wrongdoing is not immune.

28. Defendant Scarborough knew the propriety of the order of reference is challenged. No valid order of reference is final and in effect, therefore, Defendant Scarborough had no jurisdiction at any time material hereto.

29. No verified petition was filed and lack of verification is a fatal flaw. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). Verified petitions are mandatory for summary remedy because private parties are essentially acting under color of state law.

30. Summary remedy is used where a party has been given the right to jury trial or the opportunity for jury trial. In this case, the revised FPA statute is unconstitutional under the state and/or Federal Constitutions because it denies the right to jury trial. Summary remedy in this case is unconstitutional because the revised FPA was not applicable. The trial judge denied legal malpractice defendants' motion for summary judgment which precludes sanctions under the prior FPA statute and decisional law in effect at the pertinent time. *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011).

For a First Cause of Action – Injunctive Relief (State Constitutional Claims)

31. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

32. Defendants have violated plaintiff's fundamental rights provided by the South Carolina Constitution under Article I, §§ 2, 3, 4, and 9. Defendants under color of state law contrived to violate plaintiffs fundamental constitutional rights including, but not limited to, by denying the right to defend, access to the courts, the right to freedom of speech, the right to petition the government including the courts, wrongful confiscation of unearned filing fees for public use, wrongful taking under color of state law at the behest of and for the benefit of legal malpractice defendants, untrustworthy officers of the court, and other wrongdoing.

33. Defendants actions demonstrate deliberate indifference to the fundamental rights of plaintiff and plaintiff is damaged by defendants' wrongdoing, violation of fundamental constitutional rights, and wrongful taking of property under color of state law.

34. When plaintiff tried to access the court after the attached February 9, 2017, Order, multiple filings were returned due to that Order. Plaintiff is prejudiced including, but not limited to, the right to adequate record in order to afford meaningful judicial review on appeal.

35. Plaintiff seeks injunctive relief requiring defendants to refrain from violation of plaintiff's fundamental rights provided by the South Carolina Constitution under Article I, §§ 2, 3, 4, and 9 so long as plaintiff is lawfully exercising those fundamental rights and plaintiff asks the Court for attorneys fees and costs.

36. Plaintiff seeks injunctive relief requiring defendants to refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order, a copy of which is attached.

For a Second Cause of Action – Injunctive Relief (Federal Constitutional Claims)

37. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

38. Defendant Scarborough and co-conspirators Becker, Caskey, and Hsb are and at all times material hereto were persons acting under color of state law proximately causing deprivation of plaintiff's fundamental rights, equal protection of the laws and/or equal privileges and immunities under the laws as secured by the Constitution and laws with the February 9, 2017, Order, a copy of which is attached.

39. Defendants violated plaintiff's fundamental rights provided by the United States Constitution and the First, Fifth, Seventh, Eighth, and Fourteenth Amendments. Defendants under color of state law contrived to violate plaintiffs fundamental constitutional rights including, but not limited to, by denying the right to defend, access to the courts, the right to freedom of speech, the right to petition the government including the courts, wrongful confiscation of unearned filing fees for public use, wrongful taking under color of state law at the behest of and for the benefit of legal malpractice defendants, untrustworthy officers of the court, and other wrongdoing.

40. Defendants' actions demonstrate deliberate indifference to the fundamental rights of plaintiff provided by the United States Constitution and the First, Fifth, Seventh, Eighth, and Fourteenth Amendments. Plaintiff is damaged by defendants' wrongdoing, violation of fundamental rights, and wrongful taking of property under color of state law.

41. Plaintiff seeks injunctive relief requiring defendants to refrain from violation of plaintiff's fundamental rights provided by the United States Constitution and the First, Fifth, Seventh, Eighth, and Fourteenth Amendments so long as plaintiff is lawfully exercising those fundamental rights and plaintiff seeks prospective relief under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and/or the United States Constitution and the First, Fifth, Seventh, Eighth, and Fourteenth Amendments to award attorneys fees and costs.

42. Plaintiff seeks injunctive relief requiring defendants to refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order, a copy of which is attached.

For a Third Cause of Action – Injunctive Relief (Common Law and State Tort Claims)

43. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

44. Defendants Scarborough, Becker, Caskey, and Hsb individually and by and through officers, officials, employees, and agents contrived to and in fact did violate plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitutions and laws with the February 9, 2017, Order, a copy of which is attached.

45. Defendants intentionally caused the wrongdoing and the wrongdoing was unlawful.

46. Plaintiff seeks injunctive relief requiring defendants to refrain from violation of plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitutions and laws so long as plaintiff is lawfully exercising those fundamental rights.

47. Plaintiff seeks injunctive relief requiring defendants to refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order, a copy of which is attached.

For a Fourth Cause of Action – Damages (42 U.S.C. § 1983 Claims)

48. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

49. M. R. Scarborough acting under color of state law, violated plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution; plaintiff was wrongfully prevented from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition.

50. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb violated plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution; plaintiff was wrongfully prevented from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition.

51. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb conspired, directly or indirectly, among and between themselves to violate plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

52. At all times material hereto, plaintiff sought to engage in lawful exercise of fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws.

53. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb are named in this lawsuit and sued in their individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983 and the underlying decisional law issued by the United States Supreme Court and its inferior courts.

54. Defendant M. R. Scarborough, acting under color of state law, was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution

including, but not limited to, by wrongfully issuing the February 9, 2017, Order, a copy of which is attached.

55. Defendant M. R. Scarborough, acting under color of state law, also had a sworn duty to preserve, protect, and defend the constitution of the State of South Carolina and the Constitution of the United States of America and was required to uphold the laws of South Carolina and the United States of America. Defendant Scarborough was deliberately indifferent to plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by issuing the wrongful February 9, 2017, Order, a copy of which is attached. Even if, this defendant was just doing as he was told or was misled, he still violated his sworn duty.

56. Defendant Becker was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court which is referenced in the attached copy of the February 9, 2017, Order, and/or wrongfully causing that Order. Defendant Becker, on information and belief, directly or indirectly misrepresented his interest in the matter as memorialized in the attached copy of the S.C. Court of Appeals correspondence dated February 2017. The attached copy of Motion entered September 29, 2017, admits Defendant Becker has no ownership rights or interests and admits his previous misrepresentations. Defendant Becker is a full-time attorney with Defendant Hsb who is regularly engaged in the practice of law and who knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

57. Defendant Caskey was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court and wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Caskey is a full-time attorney with Defendant Hsb who is regularly engaged in practice with the debt collection department of Hsb and who knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

58. Defendant Hsb was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments

of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court and wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Hsb with its debt collection department is regularly engaged in the practice of debt collection and knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

59. Plaintiff seeks damages and punitive damages in an amount to be determined by a jury when informed in this matter and properly charged with the law by this Court. Plaintiff also seeks attorneys fees and costs pursuant to 42 U.S.C. § 1988.

For a Fifth Cause of Action – Declaratory Judgment and Injunction (42 U.S.C. § 1983 Claims)

60. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

61. M. R. Scarborough acting under color of state law, violated plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution; plaintiff was wrongfully prevented from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition.

62. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb violated plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution; plaintiff was wrongfully prevented from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition.

63. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb conspired, directly or indirectly, among and between themselves to violate plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

64. At all times material hereto, plaintiff sought to engage in lawful exercise of fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws.

65. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb are named in this lawsuit and sued in their individual capacity for purposes of declaratory judgment, injunction, and damages pursuant to 42 U.S.C. § 1983 and the underlying decisional law issued by the United States Supreme Court and its inferior courts.

66. Defendant M. R. Scarborough, acting under color of state law, was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by wrongfully issuing the February 9, 2017, Order, a copy of which is attached.

67. Defendant M. R. Scarborough, acting under color of state law, also had a sworn duty to preserve, protect, and defend the constitution of the State of South Carolina and the Constitution of the United States of America and was required to uphold the laws of South Carolina and the United States of America. Defendant Scarborough was deliberately indifferent to plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by issuing the wrongful February 9, 2017, Order, a copy of which is attached. Even if, this defendant was just doing as he was told or was misled, he still violated his sworn duty.

68. Defendant Becker was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court which is referenced in the attached copy of the February 9, 2017, Order, and/or wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Becker, on information and belief, directly or indirectly misrepresented his interest in the matter as memorialized in the attached copy of the S.C. Court of Appeals correspondence dated February 24, 2017. The attached copy of Motion entered September 29, 2017, admits Defendant Becker has no ownership rights or interests and admits his previous misrepresentations. Defendant Becker is a full-time attorney with Defendant Hsb who is regularly engaged in the practice of law and who knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

69. Defendant Caskey was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments

of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court and wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Caskey is a full-time attorney with Defendant Hsb who is regularly engaged in practice with the debt collection department of Hsb and who knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

70. Defendant Hsb by and through its employees/agents was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court and wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Hsb with its debt collection department is regularly engaged in the practice of debt collection and knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

71. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb use the inapplicable and unconstitutional revised S. C. Code § 15-36-10 (FPA) to deprive the plaintiff of equal protection of the laws and/or equal privileges and immunities under the laws as secured by the Constitution and laws. The revised FPA is inapplicable because the record reflects the facts giving rise to the underlying cause of action occurred prior to the revised FPA's effective date. *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). The revised S. C. Code § 15-36-10 is unconstitutional on its face and as applied including, but not limited to, the reasonable attorney standard which is not fair notice to the public or to parties. Similarly, the revised FPA is unconstitutional on its face and as applied including, but not limited to, the reporting provisions; sanctions were reported to the appeals court while under stay pending appeal which denied unbiased, objective, and meaningful judicial review on appeal. In *Dennis v. Sparks*, 449 U.S. 24, 28-29 (1980), the U.S. Supreme Court held that private parties who conspired with a judge to fix a case acted under color of law. Essentially, Defendants Becker, Caskey, and Hsb, untrustworthy officers of the court herein, conspired directly or indirectly with Defendant Scarborough and acted under color of state law to fix the case. Defendant co-conspirators herein all acted in furtherance of the conspiracy including, but not limited to, wrongdoing in order to deny the plaintiff the right to defend, the right to trial by jury, the right of access to the court, the right of free speech, the right to represent oneself, the right of due process, and the right to confront, cross-examine, present evidence, and call witnesses. See attached Order entered February 9, 2017, which falsely claims there was a hearing when there was no hearing. Further, that Order is over broad, it is not time-limited, and it wrongfully deprives a citizen of the right to defend, to represent oneself, to access the court, to bring meritorious claims, and to file in perpetuity.

72. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201-2202, that the revised S.C. Code § 15-36-10 (hereafter FPA) is unconstitutional on its face and as applied in violation of plaintiff's First, Fifth, Seventh, Eighth, and/or Fourteenth Amendment rights and plaintiff seeks an injunction

restraining Defendants Becker, Caskey, Hsb, and Scarborough acting under color of state law, from enacting, executing, enabling, enforcing, or attempting to enforce the revised FPA statute and to restrain interference with plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution

73. Plaintiff seeks damages and punitive damages in an amount to be determined by a jury when informed in this matter and properly charged with the law by this Court. Plaintiff also seeks attorneys fees and costs pursuant to 42 U.S.C. § 1988.

For a Sixth Cause of Action – Damages (42 U.S.C. § 1985 Claims)

74. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

75. M. R. Scarborough acting under color of state law, violated plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution; plaintiff was wrongfully prevented from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition with the February 9, 2017, ex parte Order, a copy of which is attached..

76. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb violated plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution; plaintiff was wrongfully prevented from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition.

77. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb conspired on or about February 9, 2017, directly or indirectly, among and between themselves to violate plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution.

78. At all times material hereto, plaintiff sought to engage in lawful exercise of fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws.

79. Defendants J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb are named in this lawsuit and sued in their individual capacity for purposes of damages pursuant to 42 U.S.C. § 1985 and the underlying decisional law issued by the United States Supreme Court and its inferior courts.

80. Defendant M. R. Scarborough, acting under color of state law, was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right to defend, right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by wrongfully issuing the February 9, 2017, Order, a copy of which is attached.

81. Defendant M. R. Scarborough, acting under color of state law, also had a sworn duty to preserve, protect, and defend the constitution of the State of South Carolina and the Constitution of the United States of America and was required to uphold the laws of South Carolina and the United States of America. Defendant Scarborough was deliberately indifferent to plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by issuing the wrongful February 9, 2017, Order, a copy of which is attached. Even if, this defendant was just doing as he was told or was misled, he still violated his sworn duty.

82. Defendant Becker was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by direct or indirect wrongdoing such as impermissible ex parte communication with the court which is referenced in the attached copy of the February 9, 2017, Order, and/or wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Becker, on information and belief, directly or indirectly misrepresented his interest in the matter as memorialized in the attached copy of the S.C. Court of Appeals correspondence dated February, 2017. The attached copy of Motion entered September 29, 2017, establishes Defendant Becker has no ownership rights or interests and admits his previous misrepresentations which formed just one of the bases for dismissal of the unverified petition in collateral proceeding. Defendant Becker is a full-time attorney with Defendant Hsb who is regularly engaged in the practice of law and who knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

83. Defendant Caskey was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by wrongdoing such as direct or indirect impermissible ex parte communication with the court and wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Caskey is a full-time attorney with Defendant Hsb who is regularly engaged in the practice of debt collection law with the debt collection department of Hsb. This defendant knew or should have known of the wrongdoing in violation of Fair Debt Collection Laws and other laws.

84. Defendant Hsb by and through its agents/employees was deliberately indifferent towards plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution including, but not limited to, by wrongdoing such as direct or indirect impermissible ex parte communication with the court and wrongfully causing the February 9, 2017, Order, a copy of which is attached. Defendant Hsb with its debt collection department is regularly engaged in the practice of debt collection and knew or should have known of wrongdoing in violation of Fair Debt Collection Laws and other laws.

85. Plaintiff asserts violations of the deprivation and hindrance clauses of 42 U.S.C. § 1985(3). As to the hindrance claim, all defendants including Defendant Scarborough acting under color of state law conspired to hinder or impede the plaintiff's civil rights, equal protection of the laws and/or equal privileges and immunities per the Constitution and the laws. The aim of the conspiracy is to hinder or impede including, but not limited to, the plaintiff's right to defend, right of access to the courts, and First Amendment rights as evidenced in the attached copy of the February 9, 2017, Order, issued at the impermissible ex parte behest of legal malpractice defendants, untrustworthy officers of the court. That Order is non-judicial and without jurisdiction because it was issued ex parte and falsely claims there was a hearing. There is no legal authority or jurisdiction for ex parte orders unless there are justifying exigent circumstances which are recited in the order; none have been claimed in the attached copy of the February 9, 2017, Order. Falsely claiming there was a hearing when there was no hearing is a non-judicial act since no reasonable jurist would or should have, or would reasonably believe he has, that authority and/or jurisdiction. Confiscating unearned filing fees (more than $20.00) for public use is a non-judicial act because no reasonable jurist would or should have, or would reasonably believe he has, the authority and/or jurisdiction to confiscate fees or to "scrub" already docketed Rule 60, SCRCP, and other pertinent motion pending before the Presiding Judge, who was not Defendant Scarborough. Further, this defendant knew the order of reference was pending challenge and was not final, therefore, Defendant Scarborough had no jurisdiction. There was no final or valid order of reference in effect on February 9, 2017, or at any pertinent time.

86. All defendants engaged in conspiracy for the purpose of depriving, either directly or indirectly, the plaintiff of the equal protection of the laws and of equal privileges and immunities under the laws; defendants have caused damages to the plaintiff and have deprived the plaintiff of rights and privileges of a citizen of the United States. Acts in furtherance of the conspiracy include, but are not limited to, the following: Defendant M. R. Scarborough, acting under color of state law, wrongfully issued the unconstitutional February 9, 2017, Order; Defendant Becker, directly or indirectly, engaged in impermissible ex parte contact with Defendant Scarborough causing the unconstitutional February 9, 2017, Order which references unrelated matter with different caption and different parties and provided by Defendant Becker; Defendant Caskey, directly or indirectly, engaged in impermissible ex parte contact with Defendant Scarborough causing the unconstitutional February 9, 2017, Order.

87. Moreover, Plaintiff asserts violations of the deprivation clause of 42 U.S.C. § 1985(3). The Fourth Circuit has recognized 42 U.S.C. § 1985(3) discrimination claims on the basis of gender. Defendant co-conspirators J. Y. Becker, M. M. Caskey, M. R. Scarborough acting under color of state law, and Defendant Hsb conspired, directly or indirectly, among and between themselves to deprive the plaintiff of equal protection of the laws and/or equal privileges and immunities per the Constitution and the laws with invidious gender discrimination and prejudice. Defendants misrepresented that the revised FPA was applicable when it was not, resulting in unconstitutional retroactive application of the revised S. C. Code § 15-36-10 (FPA). *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). The revised S. C. Code § 15-36-10 is unconstitutional on its face and as applied including, but not limited to, gender discrimination in its proportionality and application. As just one example, invidious gender discrimination is evidenced by the attached copy of the Civil Action Cover Sheet showing that the reasonable male attorney who signed the complaint certified that the claim was not frivolous. Significantly and materially, controlling precedent establishes that the plaintiff had a right to rely on the reasonable attorney who certified the claim was not frivolous. See *In re Ruffin*, 363 S.C. 347, 610 S.E.2d 803 (2005) (Court found lawyer did not violate Rule 3.1 in filing a meritless complaint because there was no clear and convincing evidence of the misconduct; the lawyer relied on the advice of his attorney). The plaintiff relied on the reasonable male attorney's certification that the cause of action was not frivolous; however, the male attorney was not charged with a violation of the revised S. C. Code § 15-36-10 while the female who do not sign or certify was charged. Other examples abound. See attached copy of another Civil Action Cover Sheet showing that the reasonable male attorney who signed the complaint certified that the claim was not frivolous. Again, the plaintiff relied on the reasonable male attorney's certification that the cause of action was not frivolous; however, the male attorney was not charged with a violation of the revised S. C. Code § 15-36-10 while the female who do not sign or certify was charged. Further, a review of proportionality under the revised S. C. Code § 15-36-10 reveals excessiveness driven by gender discrimination and in violation of the Eighth Amendment, consistent with animus, gender discrimination, and prejudice. Excessiveness is evident in the amount as well as the fact that the statute authorizes different penalties for parties as opposed to attorneys but not both. Both were applied indicating prejudice and invidious discrimination. Nancy Bloodgood's FPA sanction and/or its excessiveness is driven by invidious gender discrimination as is

the FPA sanction reported in the attached copy of a news article dated September 2016. Defendant co-conspirators all acted in furtherance of the conspiracy including, but not limited to, wrongdoing in order to deny the plaintiff the right to defend, the right to trial by jury, the right of access to the court, the right of freedom of speech, the right to represent oneself, and the right to confront, cross-examine, present evidence, and call witnesses. See attached Order entered February 9, 2017, which falsely claims there was a hearing when there was no hearing. Further, that Order is over broad, it is not time-limited, and it wrongfully deprives a citizen of the right to defend, to represent oneself, to access the court, to bring meritorious claims, and to file in perpetuity. That Order essentially anointed legal malpractice defendants, untrustworthy officers of the court. [See attached transcript excerpt of legal malpractice expert Professor John Freeman testifying under oath that what Defendants Becker and Hsb did was unethical, the misconduct amounted to blackmail, it was a form of extortion, and the misconduct was "criminal in South Carolina to do that." See also attached copy of document which untrustworthy officer of the court Defendant Becker caused to be back-dated in the Columbia Division of this District Court in order to cover-up malfeasance and prejudicial lack of diligence in that case. This Honorable Court witnessed in whole or in part wrongdoing by legal malpractice Defendants Becker and Hsb which in fact did prejudice that case and the plaintiff. See Federal Court order documenting malfeasance by legal malpractice Defendants Becker and Hsb. The pendant claims in that case were transferred to state court and resolved in plaintiff's favor. Legal malpractice Defendants Becker and Hsb filed no counterclaim in their case because they had none. See also attached copy of expert opinion affidavit.] Moreover, that Order by Defendant Scarborough filed February 9, 2017, wrongfully confiscated unearned filing fees which were then applied to public or other use. Defendant Scarborough wrongfully "scrubbed" motions which had been paid for, filed, and docketed. Significantly and materially, the pending Rule 60, SCRCP, motion was filed first, it took priority, and it was then pending for the Presiding Judge, NOT Defendant Scarborough. The Presiding Judge is the only judge with jurisdiction. Defendant Scarborough knew or should have known he was not the Presiding Judge for the Rule 60, SCRCP, motion or other and therefore, had no jurisdiction. [See attached correspondence by the Honorable Julie Armstrong documenting jurisdiction with the Presiding Judge, who is not Defendant Scarborough.] Plaintiff is also damaged by Defendant Scarborough's wrongful order issued without jurisdiction, without required notice, without supporting evidence, unsupported by the record, and without due process in violation of, including but not limited to, Fair Debt Collection Laws and S.C. Code § 37-2-413.

88. Plaintiff seeks damages and punitive damages in an amount to be determined by a jury when informed in this matter and properly charged with the law by this Court. Plaintiff also seeks attorneys fees and costs pursuant to 42 U.S.C. § 1988.

For a Seventh Cause of Action – Negligence

89. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

90. Defendants Becker, Caskey, and Hsb's wrongdoing is gross negligence with willful, wanton, and/or reckless disregard for the plaintiff and the plaintiff's rights as evidenced in the attached copy of Defendants Becker, Caskey, and Hsb's November 1, 2016, correspondence. Defendants owed a duty of due care to the plaintiff. Defendants Becker, Caskey, and Hsb breached that duty causing damages, including but not limited to, special damages. Defendants Becker, Caskey, and Hsb's wrongdoing is the direct and proximate cause of damages.

For an Eighth Cause of Action – Equitable Claims

91. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

92. Defendants Becker, Caskey, and Hsb's wrongdoing is actionable as an equitable cause of action, including but not limited to, Defendants misrepresent, falsely claim money owed on a loan, claim improper interest, and/or unjust enrichment. Equitable estoppel, quantum meruit, unclean hands, and/or other equitable principles operate to prevent Defendants Becker, Caskey, and Hsb's unjust enhancement. Defendants wrongfully claim a benefit to which they are not equitably entitled.

For a Ninth Cause of Action – FDCPA

93. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

94. Defendants Becker, Caskey, and Hsb falsely represented the character, amount, and/or legal status of debt, falsely misrepresented interest, and further overshadowed and obscured the disclosures required by 15 USC § 1692g(a) et seq. during the thirty-day dispute period. (15 U.S.C. §§ 1692e(2)(A), 1692e(5), 1692e(10), 1692g(b), S.C. Code § 37-5-101 *et seq.*(SCCPC), and S.C. Code § 39-5-10 *et seq.* (UTPA). See copy of correspondence dated November 1, 2016, attached hereto.

95. Defendants Becker, Caskey, and Hsb's aforementioned conduct violated the FDCPA.

96. Defendants' conduct was willful.

97. Defendants Becker, Caskey, and Hsb's actions constitute conduct highly offensive to a reasonable person, causing adverse effects on the public interest by abusive, unfair, deceptive, and/or false practices. The abusive, unfair, and deceptive practices are capable of repetition and capable of evading judicial review. As a result of Defendants' violations of the FDCPA, Defendants Becker, Caskey, and Hsb are liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

For a Tenth Cause of Action – SCCPC

98. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

99. Defendants Becker, Caskey, and Hsb falsely represented the character, amount, and/or legal status of debt, falsely misrepresented interest, and further overshadowed and obscured the disclosures required by 15 USC § 1692g(a) et seq. during the thirty-day dispute period. (15 U.S.C. §§ 1692e(2)(A), 1692e(5), 1692e(10), 1692g(b), S.C. Code § 37-5-101 *et seq.*(SCCPC), and S.C. Code § 39-5-10 *et seq.* (UTPA). See copy of correspondence dated November 1, 2016, attached hereto.

100. Defendants Becker, Caskey, and Hsb's aforementioned conduct violated the SCCPC.

101. Defendants' conduct was willful.

102. Defendants Becker, Caskey, and Hsb's actions constitute conduct highly offensive to a reasonable person, causing adverse effects on the public interest by abusive, unfair, deceptive, and/or false practices. The abusive, unfair, and deceptive practices are capable of repetition and capable of evading judicial review. As a result of Defendants' violations of the SCCPC, Defendants Becker, Caskey, and Hsb are liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

For an Eleventh Cause of Action – UTPA

103. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

104. Defendants Becker, Caskey, and Hsb falsely represented the character, amount, and/or legal status of debt, falsely misrepresented interest, and further overshadowed and obscured the disclosures required by 15 USC § 1692g(a) et seq. during the thirty-day dispute period. (15 U.S.C. §§ 1692e(2)(A), 1692e(5), 1692e(10), 1692g(b), S.C. Code § 37-5-101 *et seq.*(SCCPC), and S.C. Code § 39-5-10 *et seq.* (UTPA). See copy of correspondence dated November 1, 2016, attached hereto.

105. Defendants Becker, Caskey, and Hsb's aforementioned conduct violated the UTPA including, but not limited to, S.C. Code § 37-5-108 - Unconscionability.

106. Defendants' conduct was willful.

107. Defendants Becker, Caskey, and Hsb's actions constitute conduct highly offensive to a reasonable person, causing adverse effects on the public interest by abusive, unfair, deceptive, and/or false practices as well as wrongfully preventing plaintiff from exercising fundamental constitutional rights including, but not limited to, right to defend, right of access to the courts, free speech, and petition. The abusive, unfair, and deceptive practices are capable of repetition and capable of evading judicial review. As a result of Defendants' violations of the UTPA, Defendants Becker, Caskey, and Hsb are liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

IV. Relief

WHEREFORE, the plaintiff prays for the following:

A) A jury trial;

B) Injunctive relief pursuant to 42 U.S.C. § 1983 against defendant(s) to refrain from unlawfully denying the Constitutional right to defend, to access the courts, to free speech, to petition, to represent oneself, to adequate record for meaningful judicial review on appeal, and meaningful opportunity to be heard and from wrongfully enacting, executing, enabling, enforcing, or attempting to enforce the February 9, 2017, Order, a copy of which is attached;

C) Injunctive relief pursuant to the South Carolina Constitution against defendant(s) to refrain from unlawfully denying the Constitutional right to defend, to access the courts, to free speech, to petition, to represent oneself, to adequate record for meaningful judicial review on appeal, and meaningful opportunity to be heard and from wrongfully enacting, executing, enabling, enforcing, or attempting to enforce the February 9, 2017, Order, a copy of which is attached;

D) Injunctive relief pursuant to our common law against defendant(s) to refrain from unlawfully denying the right to defend, to access the courts, to free speech, to petition, to represent oneself, to adequate record for meaningful judicial review on appeal, and meaningful opportunity to be heard and from wrongfully enacting, executing, enabling, enforcing, or attempting to enforce the February 9, 2017, Order, a copy of which is attached;

E) Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201-2202, that the revised S.C. Code § 15-36-10 (hereafter FPA) is unconstitutional on its face and as applied in violation of plaintiff's First, Fifth, Seventh, Eighth, and/or Fourteenth Amendment rights and plaintiff seeks an injunction restraining Defendants Becker, Caskey, Hsb, and Scarborough acting under color of state law, from enacting, executing, enabling, enforcing, or attempting to enforce the revised FPA statute so as to interfere with plaintiff's fundamental rights, equal protection of the laws, and/or equal privileges and immunities under the laws as secured by the Constitution and laws including, but not limited to, violation of plaintiff's right of access to the courts, free speech, petition, and/or rights under the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution

F) Damages and punitive damages for defendant(s) violation of plaintiff's constitutional rights pursuant to 42 U.S.C. § 1983;

G) Damages, special damages, and punitive damages;

H) Attorneys fees and costs;

I) Defendants Becker, Caskey, and Hsb willfully, wantonly, and recklessly misrepresented the character, amount, interest, and/or legal status of debt and further overshadowed and obscured the disclosures required by 15 USC § 1692g(a) et seq. Defendants Becker, Caskey, and Hsb acted in willful, wanton, and reckless disregard for the plaintiff's fundamental rights; Defendants Becker,

Caskey, and Hsb knew or should have known the acts were wrongful. Defendants directly and proximately caused damages. Defendants Becker, Caskey, and Hsb owed a duty of care to the Plaintiff. The Plaintiff respectfully prays that this Honorable Court grant relief against the Defendants Becker, Caskey, and Hsb for actual damages, special damages, costs of the action, attorneys fees, exemplary damages, punitive damages, and/or damages equal to the value of the unjust enrichment and/or benefit unjustly claimed by Defendants Becker, Caskey, and Hsb as determined by the trier of fact; and

J) Adjudging that Defendants Becker, Caskey, and Hsb violated the FDCPA;

K) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of $1,000.00;

L) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;

M) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

N) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;

O) Adjudging that Defendants Becker, Caskey, and Hsb violated the SCCPC;

P) Awarding Plaintiff statutory damages pursuant to the SCCPC, S.C. Code § 37-5-101 *et seq.*,

Q) Awarding Plaintiff actual damages pursuant to the SCCPC;

R) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;

S) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;

T) Adjudging that Defendants Becker, Caskey, and Hsb violated the UTPA;,

U) Awarding Plaintiff actual damages, pursuant to S.C. Code § 39-5-10 *et seq.* (UTPA);

V) Awarding Plaintiff three times actual damages, pursuant to S.C. Code § 39-5-10 *et seq.* (UTPA);

X) Awarding Plaintiff reasonable attorneys' fees ands costs incurred in this action;

Y) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;

Z) For such other and further relief as the Court may deem just and proper.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11/1/17 6/16/18

Signature of Plaintiff

Printed Name of Plaintiff

B. For Attorneys

Date of signing:

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes

PLAINTIFF(S)

Haynesworth Sinkler Boyd, et al.

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2017 FEB -9 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

JUDGMENT INFORMATION FOR THE PUBLIC INDEX
(Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate N/A in one of the boxes below.)

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge | 3062 Judge Code | Date 2/8/17

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Exhibit B

Haynsworth
Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

MARY M. CASKEY
DIRECT DIAL NUMBER 803.540.7870
EMAIL mcaskey@hsblawfirm.com

November 1, 2016

Cynthia Holmes
Post Office Box 187
Sullivans Island, SC 29482

Re: Payment Demand for Judgment in favor of Haynsworth Sinkler Boyd, P.A., filed on November 18, 2009 in Charleston County, South Carolina
HSB File No. 04625.1439

Dear Ms. Holmes:

We are writing you to collect on the judgment entered in favor of our firm, Haynsworth Sinkler Boyd, P.A., on November 18, 2009, in the Court of Common Pleas, Charleston County, South Carolina.

The amount due on the judgment is $200,000.00, plus interest from the date of entry of the judgment calculated at the interest rate as set forth in the subject loan documents that gave rise to the judgment. The total amount due is $301,304.11 as of November 1, 2016, and we demand immediate payment of the total amount due.

Payment should be made to Haynsworth Sinkler Boyd, P.A., and delivered to this firm at Post Office Box 11889, Columbia, South Carolina, 29211, or at 1201 Main Street, Suite 2200, Columbia, South Carolina, 29201.

Please respond to this letter within ten (10) days. If you fail to respond, legal action may be taken against you to collect the judgment. Such action could include seizure and judicial sale of your property to satisfy the judgment.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey

Mary M. Caskey
mcaskey@hsblawfirm.com
Telephone: (803) 540-7870

MMC/hh

DM: 4715726 v.1

Exhibit C

This is to advise that the title in the above matter has been changed to read as follows:

Cynthia Holmes, Appellant,

v.

Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A.; Manton Grier; and James Y. Becker, Defendants,

Of whom Manton Grier and James Y. Becker are Respondents.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

Jonny Abbott Kitchings

CLERK

cc: James Y. Becker, Esquire
Manton M. Grier, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 24, 2017

Cynthia Holmes
PO Box 187
Sullivan's Island SC 29482

Re: Cynthia Holmes v. Haynsworth (3)
Appellate Case No. 2017-000266

Dear Dr. Holmes:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Exhibit 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

FILED
2017 SEP 29 PM 2:20
JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") hereby move this Court to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not have any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they request that they be dismissed as Petitioners, and that Haynsworth Sinkler Boyd, P.A. be the sole remaining petitioner in this action. There are no pending claims asserted by Plaintiff against Defendants in this matter. A proposed order is attached.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76798
Post Office Box 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
Facsimile No: (803) 765-1243
ATTORNEYS FOR DEFENDANTS

September 22, 2017

1

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Charleston)

Dr. Cynthia Holmes, M.D.
Plaintiff(s)

vs.

East Cooper Regional Medical Center, Trust Health System, John Grady, M.D, Paul Yanks, M.D.
Defendant(s)

CIVIL ACTION COVERSHEET

05 - CP - 10 - 5113

(Please Print)
Submitted By: Chalmers C. Johnson
Address: Chalmers Johnson Law Firm, LLC
192 East Bay St. Ste. 203
Charleston SC 29401
843 723-8288

SC Bar #: 11563
Telephone #: 843 723-8288
Fax #: 843 953-8749
Other:
E-mail: ChalmersJohnson@gmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check one box below)*

- [X] JURY TRIAL demanded in complaint.
- [ ] This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- [X] This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR (certificate attached).

NATURE OF ACTION
(Check One Box Below)

Contracts
- [ ] Construction (100)
- [ ] Debt Collection (110)
- [ ] Employment (120)
- [ ] General (130)
- [X] Wrongful Breach (140)
- [ ] Other (199)

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [ ] Medical Malpractice (220)
- [ ] Other Malpractice (299)

Torts - Personal Injury
- [ ] Assault/Slander/Libel (300)
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [ ] Other (399)

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Other (499)

Inmate Petitions
- [ ] PCR (500)
- [ ] Sexual Predator (510)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript Judgment (740)
- [ ] Lis Pendens (750)**
- [ ] Other (799)

Administrative Law/Relief
- [ ] Driver License Reinstate (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture (840)
- [ ] Other (899)

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Other (999)

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699)

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: _____ Date: 12-16-05

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (3/04)

Page 1 of 2

Exhibit F

B

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS

Dr. Cynthia Holmes, M.D., Plaintiff(s)

vs.

East Cooper Community Hospital, Inc., Tenethealth System Medical, Inc., Defendant(s)

CIVIL ACTION COVERSHEET

10 -CP-10 - 3410

(Please Print)
Submitted By: Chalmers C. Johnson
Address: 523 So. 6 Street, Apt 402
Tacoma, WA 98405

SC Bar #: 11583
Telephone #: 425-999-0900
Fax #:
Other:
E-mail: chalmers.johnson@gmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

- [x] JURY TRIAL demanded in complaint. [ ] NON-JURY TRIAL demanded in complaint.
- [ ] This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [x] This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
- [ ] Employment (120)
- [ ] General (130)
- [x] Breach of Contract (140)
- [ ] Other (199)

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [ ] Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-____-_____
- [ ] Notice/ File Med Mal (230)
- [ ] Other (299)

Torts - Personal Injury
- [ ] Assault/Slander/Libel (300)
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [ ] Personal Injury (350)
- [ ] Wrongful Death (360)
- [ ] Other (399)

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Building Code Violation (460)
- [ ] Other (499)

Inmate Petitions
- [ ] PCR (500)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript Judgment (740)
- [ ] Lis Pendens (750)
- [ ] Transfer of Structured Settlement Payment Rights Application (760)
- [ ] Other (799)

Administrative Law/Relief
- [ ] Reinstate Driver's License (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture-Petition (840)
- [ ] Forfeiture—Consent Order (850)
- [ ] Other (899)

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Public Service Commission (990)
- [ ] Employment Security Comm (991)
- [ ] Other (999)

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699)
- [ ] Pharmaceuticals (630)
- [ ] Unfair Trade Practices (640)
- [ ] Out-of State Depositions (650)
- [ ] Motion to Quash Subpoena in an Out-of-County Action (660)
- [ ] Sexual Predator (510)

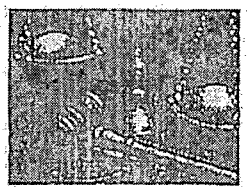
Submitting Party Signature: _____ Date: 4-13-10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Exhibit G

Mom spends years out of state fighting over daughter's guardianship

Tim Smith, tcsmith@greenvillenews.com Published 4:48 p.m. ET Sept. 9, 2016



(Photo: File / Register)

COLUMBIA — A Lexington County mother of an intellectually disabled woman whose sexual assault triggered a landmark State Supreme Court ruling is fighting to regain guardianship of her daughter, who is living in a Florence County group home.

Brenda Bryant's legal battle over guardianship took place for years in Greenville County courts because her daughter lived then in a group home there.

Since the Supreme Court ruling in 2006 that found the state Department of Disabilities and Special Needs owed a duty of care to such vulnerable adults, even if they are being cared for by a private provider that contracts with DDSN, the provider and the agency have paid $300,000 to settle the case.

But the litigation since has taken a series of bizarre turns, including allegations of misappropriation of some of the settlement money, contempt of court findings and assertions that Bryant has not visited her daughter since 2011 and cannot be found in South Carolina.

Yet on Wednesday, her attorney filed an appeal in the State Court of Appeals over the appointment this summer of a permanent guardian and an order that a criminal probe be reopened into allegations that some of the settlement money was misappropriated.

Orin Briggs, Bryant's lawyer, told *The Greenville News* that Bryant has been out of state for years. He denied she had misappropriated funds.

"I do not know where she is," he said. "All she does is call me."

Bryant, reached by *The News*, said there has been no misappropriation of funds and that she has been out of state the past four years because of a bench warrant tied to a contempt citation for not paying the legal fees of a guardian. She said the notation on the warrant indicates that she could spend an indefinite time behind bars.

She said she refused to pay the fees because her daughter was assaulted multiple times in a Greenville group home and alleged the guardian refused to move her. She said she paid the fees for her guardian but not the guardian's legal fees.

"After four years and the fact that (her daughter) was beaten, I do not believe as a mother that I would have to pay a guardian's $10,000 in legal fees," she said.

She declined to say exactly where she was living or what state.

Briggs argued in the notice of appeal that Bryant had not been properly served with legal papers in the case and that court rules require proof that she cannot be served in the state. He wrote that could have been accomplished by hand-delivering a copy to her husband at their home in Lexington.

The Supreme Court (http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26198) in 2006 took up the appeal of a ruling by a circuit judge dismissing claims by Bryant of negligence against the Babcock Center, a Columbia facility that houses intellectually disabled people, and the state Department of Disabilities and Special Needs related to sexual incidents involving her daughter.

Her daughter, then 32, lived in a Babcock facility and had the emotional and intellectual maturity of a 7-year-old to 10-year-old child, according to the court.

"She can read, write, and understand math at the level of a first- or second-grade child," then Acting Justice Derham Cole wrote in the ruling. "Appellant alleges her mental disability means she is not able to live or work independently. She cannot, for example, cook, wash clothes, run bath water, use a toaster oven, put on her own makeup, or perform personal hygiene tasks without adult supervision."

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In 1995, the daughter left her group home after everyone inside was asleep and got into a car with two other males and a female who was later dropped off, according to the ruling. One or both of the men later had sex with her. According to the ruling, she initially said she had been raped but later testified she had been talked into the sex.

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She contracted herpes at some point related to her sexual encounters while at the home, according to the ruling.

Bryant, appointed guardian in 1997, alleged that she had made repeated warnings to staff about her daughter's sexual conduct and that they failed to properly supervise her.

A judge sided with the Babcock Center and DDSN in the lawsuit, finding they "had no legal duty to maintain a constant watch over the plaintiff so as to prevent her surreptitious elopement." The judge also ruled that the proximate cause of any damages suffered by the daughter, as a matter of law, was her "own voluntary and intentional acts."

The Supreme Court disagreed.

"We reverse the circuit court and hold that Babcock Center and its employee have a common law duty to exercise reasonable care in supervising and providing care and treatment to Appellant," Cole wrote in a unanimous decision. "Department also owes a common law duty to Appellant."

Babcock Center eventually settled the case for $250,000, according to court records. DDSN paid $50,000 in the case.

In 2008, Associate Probate Judge Edward Sauvain in Greenville ordered Bryant be replaced as guardian after a series of complaints by a guardian ad litem alleging Bryant was uncooperative and had interfered in her daughter's medical care.

"While I have substantial concerns about some of the actions of the (Greenville County DSN) Board and DDSN, I find that those agencies were not the motivators for filing this action to remove Mrs. Bryant," he wrote. "Even if they had been the motivators, I would reach the same result."

He noted that Bryant had received $40,000 from the litigation without any written authorization from the court.

While records show Bryant's daughter had asked that her mother be replaced as guardian, she changed her mind and Bryant was reinstated as guardian in 2009. Bryant also was made trustee of her daughter's special needs trust.

According to court records, while Bryant placed her daughter in a Florence County group home in 2009, she stopped visiting in 2011.

It was in September of 2011 that Sauvain found Bryant in contempt of court and ordered her to jail for six months if she did not pay $10,338 to a former guardian that Bryant had refused to pay on principle, Sauvain ruled. According to court records, Bryant was jailed on the contempt charge and then paid the fees.

In September 2010, Bryant sued multiple people and agencies as well as a former guardian over her daughter's care. A judge dismissed the guardian from the suit, who sought a sanction against Bryant because she alleged the suit was frivolous since a previous probate action had released her from all claims. Circuit Court Judge Edward Miller agreed and ordered Bryant to pay $5,082 to the guardian for her legal fees. By April 2012, Miller ruled that no payment nor payment arrangements had been made and added another $3,983 for the guardian's attorney's fees. He then issued a bench warrant that Bryant be jailed for contempt but said she could be released once the bill was paid.

Bryant said the warrant remains active.

In 2013, Bryant was terminated as guardian and conservator and replaced temporarily with Jay Elliott. According to court records, an official with the group home where her daughter now stays testified this summer that Bryant is "unable" to come into the state.

Florence County Probate Judge J. Munford Scott ruled in July that Bryant's daughter wanted Elliott to serve as her guardian and conservator so he was appointing him as such.

Elliott, according to the order, has alleged that Bryant had "misappropriated" her daughter's funds and that none of the $250,000 was left and that $46,000 of the $50,000 settlement remained.

Bryant said of the $250,000, only $87,000 was left after attorneys fees and court costs were paid. Of that amount, she said, most was spent on more legal costs, on a vehicle to enable family to visit and transport her daughter in Florence, on spending money and items for her daughter's room and on vacation costs with her daughter. She said the question is more of documentation than of misappropriation and being out of state has hindered her ability to gather all the receipts and records, though she is trying.

"Why would a probate judge in Greenville give me back the guardianship and conservatorship in 2010 had I misappropriated her funds?" she asked. "Never. There is not enough money to pay for all the legal proceedings we have been in. The money can be accounted for."

Elliott told *The News* that he had not seen the appeal but thinks the argument of Bryant not being properly served "is an interesting assertion from a fugitive."

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"I certainly think the p[illegible] filed [illegible] when he [illegible]."

In his order, Scott asked that the Richland County Solicitor's Office "reopen the prior investigation" into Elliott's allegations [illegible] Bryant and her husband live in Lexington County.

"If I were a mother who had done wrong by my child, I can assure you I would not have been fighting as hard as I fought for her and now for others," Bryant said.

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Exhibit H

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

J. DOE (C. HOLMES)
PLAINTIFF
vs.
MANTON GRIER, JAMES Y. BECKER, HAYNSWORTH SINKLER & BOYD, PA,
DEFENDANTS

PARTIAL
TRANSCRIPT OF RECORD

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

A P P E A R A N C E S:

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE -- ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D. Plaintiff, v. Tenet HealthSystem Medical Inc., and East Cooper Community Hospital, Inc., Defendants.	CIVIL ACTION NO.: 2:99-0833-23 PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISSOLVE PRELIMINARY INJUNCTION

FILED
JAN 25 2000
LARRY W. PROPES, CLERK
COLUMBIA, S.C.

Plaintiff, through her undersigned counsel, hereby responds to the Defendant's Motion to Dissolve Preliminary Injunction as follows:

Plaintiff has responded to the Defendant's discovery requests and Plaintiff's experts have calculated an itemization of damages which will be provided at the time of a discovery deposition of Plaintiff's experts. This deposition was previously scheduled for Monday, January 24, 2000. Plaintiff's expert, Dr. Jonathan Cunitz, has reviewed adequate information to form his opinions and is prepared to give those in his deposition as soon as it takes place. Dr. Cunitz has not prepared a written report.

In addition, the Plaintiff's deposition has been scheduled for January 26, 2000. The Plaintiff has made reasonable attempts to comply with her discovery obligations within the time specified in the Court's Scheduling Order. Therefore, the Court should not find that there is any evidence of unclean hands which would warrant a dissolution of the preliminary injunction.

The time stamp was incorrectly changed to "1/23" by a runner. Correct date is 1/25.

SINKLER & BOYD, P.A.

By: _____
James Y. Becker
Post Office Box 11889
Columbia, South Carolina 29211
(803) 779-3080
Attorneys for the Plaintiff

January 24, 2000

Columbia, South Carolina

A TRUE COPY
Attest: Larry W. Propes, Clerk
By: _____
Deputy Clerk

I:\ADMIN\LAW\9976\02\RESP to Motion to Dissolve.doc

Exhibit J

FILED
JUN - 2 2000
LARRY W. PROPES, CLERK
CHARLESTON, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D.,

Plaintiff,

v.

Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc.,

Defendants.

C.A. # 2:99-833-23

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).[1]

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED,

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 12, 2000

2

[1] Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

Exhibit K

2010-CP-10-3410

John C. Shershow, M.D.
240 Central Park South
Suite #2H
New York, NY 10019
(800) 388-9299
Fax: (516) 706-0671
JShershow@GMail.com

July 5, 2011

FILED
2011 JUL -7 AM 8:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF NEW YORK)
COUNTY OF New York) AFFIDAVIT

Personally came and appeared before me, Notary Public, John Shershow, M.D., who upon being duly sworn did depose and say the following:

1) I am over the age of eighteen (18) years and am competent to state the matters herein.

2) My Curriculum Vitae is attached and documents my experience in all aspects of hospital administration, staffing, and quality of care as well as *JOINT COMMISSION* accreditation, hospital care standards, medical staff affairs, physician credentialing and privileging, and medical quality assessment and review.

3) I have been certified as an expert in state courts on these matters.

4) In providing this affidavit, I affirm that, to the best of my knowledge, I am not related to any party to this action. I am informed and believe that I do not know any of the parties to this action.

5) My expert opinion follows and in rendering this opinion, I have relied on a large number of documents supplied to me by Dr. Holmes, consisting of the East Cooper Community Hospital (ECCH) Medical Staff Bylaws, as well as a large number of credentialing and privileging documents of Dr. Holmes, from approximately 1994 to 2009.

6) The *Joint Commission* is an organization which accredits hospitals based on national quality of care standards. My understanding is that at all times pertinent to the matter herein, ECCH is and has been accredited by the *Joint Commission*.

7) As part of those standards, the *Joint Commission* requires hospitals to have bylaws and, as part of those bylaws, to provide fair hearing rights to physicians. Those standards are national and local standards.

8) Based on review of Dr. Holmes' credentialing file, the reappointment applications, the ECCH Medical Staff Bylaws, and a letter from Janie Sinacore-Jaberg to Dr. Holmes on December 19, 2008, it is my expert opinion that Dr. Holme's 2008 application for re-appointment and change in medical staff status in was not properly responded to by ECCH.

Article VI, Section 5, of the ECCH Medical Staff Bylaws ("Change in

Membership, Privileges or Staff Category"), states:

> *A staff member may, at any time, request a change of staff category (from consulting staff to associate or other staff category as in this case) by submitting a written notification to the Medical Staff Office. The Medical Staff Office will issue a letter requiring the physician to read and sign the letter stating the requirements of the provisional change in status. The request will be forwarded to the Department Chairman, then to the Credentials Committee. The Credentials Committee will recommend to the MEC the request, and the MEC will forward their recommendation to the Board of Directors for final approval. After final approval, the medical staff office will notify the physician of the final decision. The Medical Staff Office will track the provisional change for one (1) year and the Credentials Committee will evaluate the physician at that time to determine if he meets the necessary requirements set forth by the requested status change. (Emphasis supplied.)*

Article V, Section 3, of the ECCH Medical Staff Bylaws ("Reappointment Process") lays out 12 requirements for reappointment to the medical staff. Notably in this section it is stated:

> *[The application for reappointment will be delivered to the applicant and] must be completed and returned within 30 days to the Medical Staff Office for review. A late fee will be charged for the continued processing of the application past the 30 day deadline.*

Article IV, Section 3, of the ECCH Medical Staff Bylaws ("Associate") lays out

the qualifications for the Associate status: *[the candidate must meet all the criteria for active staff membership] except the minimum required number of admissions, procedures, or patient contact per year or preceding 12-month period."* (emphasis added)

9) Pursuant to the ECCH Medical Staff bylaw provisions quoted above, and on the attached *Joint Commission* flow sheet, it is my opinion that Dr. Holmes requests for change in staff category would and should have been granted. This is based upon (1) Dr. Holmes clearly submitted "a written notification to the Medical Staff Office," (see attached Medical Staff Reappointment Application); (1) Dr. Holmes provided information relevant to the requirements of licensure, training, education, and health status. In addition, Dr. Holmes received the highest ratings from peers for skill, competence, and quality of care; (3) Dr. Holmes maintains that she submitted the reappointment application within the required time frame; however even if she did not, the Bylaws impose only a "late fee," not a denial of privileges; (4) If Dr. Holmes application for change in status to Associate had been approved, the Bylaws are clear that she is exempt from "required number of admissions, procedures, or patient contact per year or preceding 12-month period."

10) Both the ECCH Medical Staff Bylaws, and *Joint Commission* Standards mandate a fair hearing process when adverse credentialing decisions are made by the medical staff and hospital Governing Board. Based upon my review of Dr. Holmes' credentialing files, and the ECCH Medical Staff Bylaws, it is my opinion that Dr. Holmes was denied fair hearing rights as explicitly required by these bylaws and by the *Joint Commission* standards.

Under Article VIII, Section 2B, of the ECCH Medical Staff Bylaws the grounds

for fair hearing are specified as follows:

B. Grounds for Hearing:

Except as otherwise provided in these Bylaws, the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence, unless taken in compliance with a policy decision of the hospital (e.g., closing a department or service or physical plant changes), shall constitute grounds for a hearing pursuant to this Article:

1. *denial of initial appointment to the medical staff;*
2. *denial of staff reappointment;*
3. *reduction or suspension of staff membership or clinical privileges for more than 30 days;*
4. *termination, revocation, or reduction of staff category;*
5. *denial or termination of clinical privileges;*
6. *summary suspension of clinical privileges for more than thirty (30) days;*
7. *significant consultation or co-admitting requirements other than in compliance with the Medical Staff Bylaws, Rules and Regulations or departmental rules and regulations;*
8. *denial of requested advancement in staff category;*
9. *denial of requested service affiliation.*

(emphasis added)

11) Privileges have value to a physician. A denial of privileges may lead to loss of income and/or adverse effects on professional standing and reputation.

12) In view of Dr. Holmes request for change in staff category not being processed properly and fairly by ECCH in terms of the applicable ECCH Medical Staff Bylaw provisions, Dr. Holmes was denied the opportunity for a change in status. Denial of access to the process under the plain language of the bylaws for requesting change in

staff category and denial of the right to participate in that process causes harm to any physician's practice, reputation, and ability to earn a livelihood.

13) Further, by denying Dr. Holmes fair hearing rights, per the applicable provisions of the ECCH Medical Staff Bylaw, ECCH prevented Dr. Holmes from her due process rights, mandated by both the Joint Commission, and the ECCG Medical Staff Bylaws.

FURTHER THE AFFIANT SAITH NOT.

John Shershow, M.D.

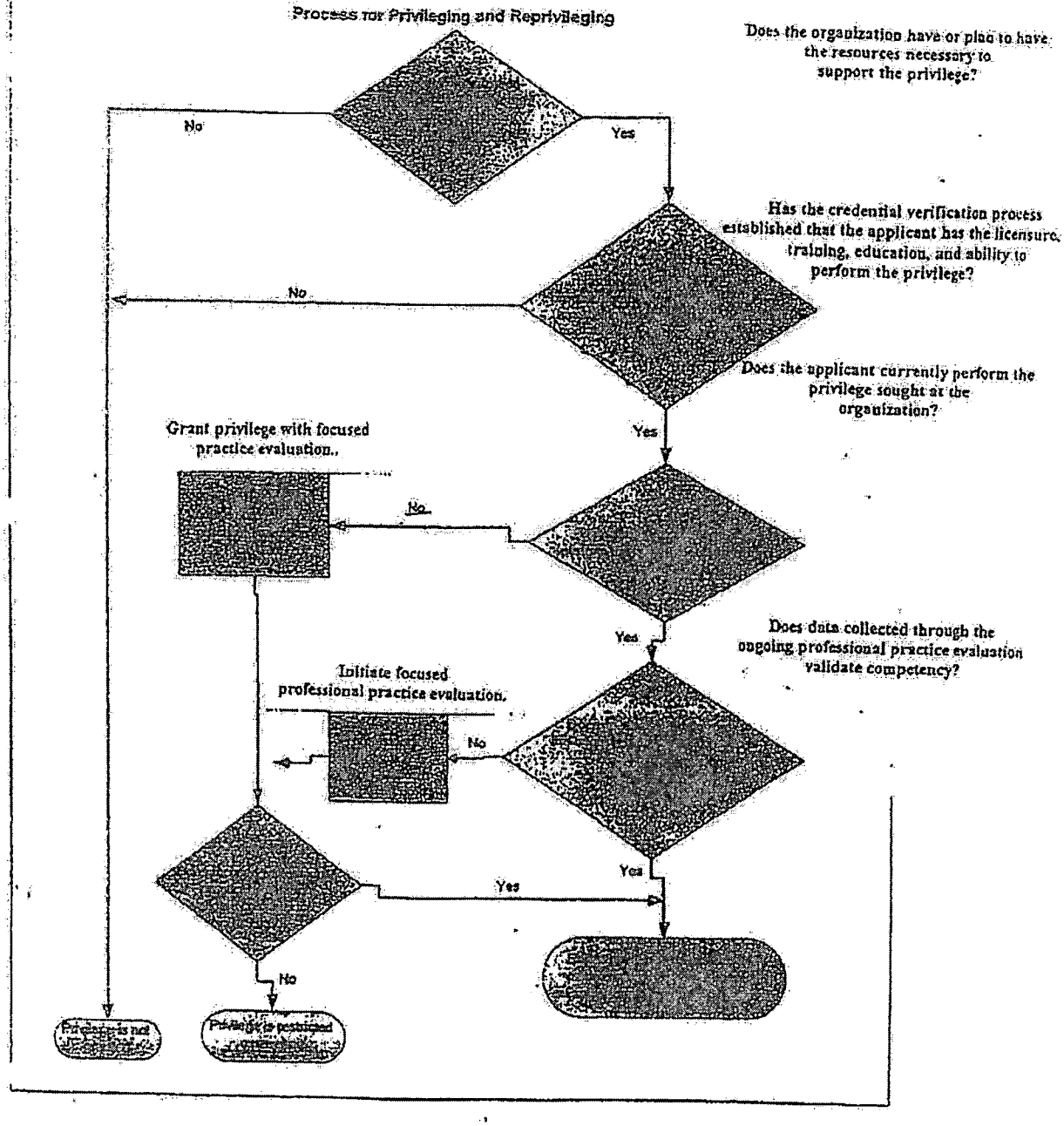
Subscribed and sworn to before me,
Notary Public, this 5 day
of July, 2011.

Helen Paulino
NOTARY PUBLIC

My commission expires: April 18 2015

SEALED

HELEN PAULINO
Notary Public - State of New York
No. 01PA6239073
Qualified in Queens County
My Commission Expires April 18, 2015


Process for Privileging and Reprivileging
Does the organization have or plan to have the resources necessary to support the privilege?
No
Yes
Has the credential verification process established that the applicant has the licensure, training, education, and ability to perform the privilege?
No
Does the applicant currently perform the privilege sought at the organization?
Yes
Grant privilege with focused practice evaluation.
No
Yes
Does data collected through the ongoing professional practice evaluation validate competency?
Initiate focused professional practice evaluation.
No
Yes
Yes
No

John C. Shershow, M.D.
240 Central Park South #2H
New York, NY 10019
(800) 388-9299
Fax: (646) 514-7195
JShershow@gmail.com

CURRICULUM VITAE

JOHN C. SHERSHOW, M.D.

Professional Experience:

- *JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS (JCAHO)* (1989-2003)
  Surveyor and Senior Teaching Faculty, for the preeminent hospital and ambulatory care accreditation organization in the United States

- *PERFORMANCE IMPROVEMENT COMPANY, INC* (1996 – present)
  Founder and President of this national hospital and healthcare consulting firm. Primary activities are consulting, lecturing, and providing educational courses to hospitals, ambulatory centers, and other healthcare organizations, on healthcare quality, peer review, performance measurement, medical staff credentialing, and preparation for JCAHO and other regulatory inspections. In addition, provides expert testimony on medical litigation.

- PRIVATE PRACTICE, JOHN C. SHERSHOW, MD, PC (2010 – present)
  Private medical practice in Manhattan, New York City

- PRESIDENT, URGENT CARE OF WYOMING, INC (2003 – present)
  Owner of an urgent care clinic in Wyoming

- *THE JOURNAL OF URGENT CARE MEDICINE* (2006 – 2008)
  On the editorial board of this medical journal

- *CHECKUPS USA, INC* (2006 – 2007)

Chief Operating Officer and Medical Director of a company developing primary cares clinics for retail environments.

- *URGENT CARE ASSOCIATION OF AMERICA* (2005-06)
  Director of Accreditation of the national urgent care organization

- *NORTHWEST COVENANT MEDICAL CENTER* (1995-1996)
  Medical Director of a major New Jersey hospital

- *DOWNSTATE MEDICAL* CENTER (1992-1995)
  Associate Dean and Associate Provost of New York State's largest medical school

- *KINGS COUNTY HOSPITAL CENTER* (1992-1995)
  Medical Director of one of the largest hospitals in the United States

- *JOHN C. SHERSHOW, M.D. AND ASSOCIATES, INC.* (1977-1989)
  Founder and President of one of the largest private medical groups in Massachusetts

- *ARBOUR HOSPITAL (1978-1989)*
  Attending staff at one of Boston's leading private hospitals; President of the Medical Staff 1985-1989.

- HARVARD MEDICAL SCHOOL (1970-2000)
  On the teaching faculty in numerous capacities

- MASSACHUSETTS GENERAL HOSPITAL (1970-2000)
  Served in various capacities, including Inpatient Director (1973-77) and on the teaching faculty (1970-2000) for this internationally known hospital

- *US ARMY RESEARCH INSTITUTE OF ENVIRONMENTAL MEDICINE* (1970-1973)
  A senior medical corps officer at one of the nation's largest military environmental research organizations

Academic Appointments:

- Clinical Instructor, *Harvard Medical School* (1970-2000)

- Assistant Professor, *Downstate Medical School* (1992-1995)

Education:

- Residency, *Yale University* (1969-1970)
- Residency, *University of Southern California* (1967-1969)
- Rotating Internship, *Los Angeles County Hospital* (1966-1967)
- M.D. *University of Southern California* (1966)
- B.A. (Magna cum Laude), *Harvard College* (1962)

Certification and Licensure:

- *National Board of Medical Examiners* (1967)
- Board Certified, *American Board of Psychiatry and Neurology* (1972)
- Past Licensure: California, Massachusetts, New Hampshire
- Current Licensure: New York, New Jersey

Memberships:

- Distinguished Fellow, *American Psychiatric Association*

Publications:

- 2 Books and numerous articles (detailed list available upon request)

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CHARLESTON COUNTY

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NINTH JUDICIAL CIRCUIT
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JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

June 25, 2015

C. Holmes, M.D.
P.O. Box 187
Sullivans Island, SC 29482

Dear Ms. Holmes,

Thank you very much for your letter of June 19, 2015 regarding Rule 59(e). In reading the rule, I believe you might be referring to 59(f) which addresses any motion filed under this rule to be heard by the judge who issued the order. My office does follow Rule 59; however, it may be that a motion is scheduled inadvertently before the incorrect judge and in those instances; the motion is removed and rescheduled with the appropriate judge.

Thank you again for your kind words and please let me know if I can be of further assistance.

Sincerely,

Julie J. Armstrong

Julie J. Armstrong
Charleston County Clerk of Court