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JUL - 8 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Opinion No. 2013-UP-034 (S.C. Ct. App. Filed January 16, 2013)

Clark D. Thomas, ... Petitioner,

V.

Bolus & Bolus
Attorneys Keith Bolus, Officially
Michael T. Bolus, Officially
and Individually, ... Respondent.

APPENDIX

Clark D. Thomas #187845
BRCI / Moultrie A-2087
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Columbia, South Carolina 29210
Pro Se Petitioner

Other Counsel of Record:

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Pro Se Respondent and
Attorney for Bolus & Bolus

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SC Court of Appeals

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

FORM 4 **RECEIVED**
JUN 22 2011 JUDGMENT IN A CIVIL CASE

SC Court of Appeals Case No.: 2010-CP-10-4820

Clark D. Thomas

versus

Bolus & Bolus, Attorneys Keith Bolus,
officially, Michael T. Bolus, Officially and
Individually

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.
- ☐ **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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☒ Rule 43(e), SCRPC (Settled); ☐ Other -
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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 THE 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's Motion to Dismiss Michael Bolus is GRANTED.
- Defendant's Motion to Dismiss Bolus & Bolus is GRANTED.
- Defendant's Motion to Dismiss Keith Bolus is GRANTED.
- Defendant's Motion to Strike Affidavit of William Gary White is GRANTED.

Dated at Charleston, South Carolina, this 18th day of April 2011.

Keith Bolus
PRESIDING JUDGE

FILED
2011 APR 19 AM 11:28
JULIE J. ARMSTRONG
CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

RECEIVED

JUN 22 2011

Case No.: 2010-CP-10-4820

Clark D. Thomas

versus

SC Court of Appeals
Bolus & Bolus, et alFILED
2011 MAY 23 AM 10:06
JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFFS

DEFENDANT(S)

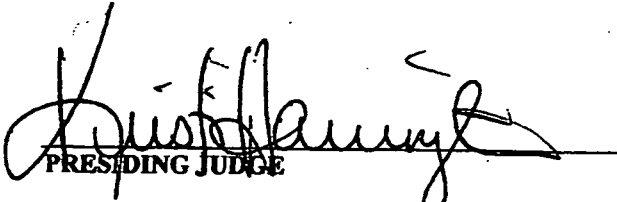
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other -
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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 THE 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:

On April 18, 2011, this Court granted Defendant's Motion to Strike the Affidavit of Gary White and all of the Defendant's Motions to Dismiss based on the Pleadings and the arguments of the parties at the hearing. The Plaintiff then filed a Motion to Alter or Amend. After reviewing the Pleadings and arguments in Plaintiff's Motion, the Court respectfully Denies the Motion to Alter or Amend.

Done in Charleston, South Carolina, this 18th day of May, 2011.


PRESIDING JUDGE

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Clark D. Thomas,
Plaintiff,)

vs.)

Bolus & Bolus, Attorneys,
Keith Bolus, officially,
Michael T. Bolus,
Officially and individually.
Defendants.)IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL DISTRICT
CASE # 10-CP-10-4820COMPLAINTJURY TRIAL REQUESTEDJULIE J. ARMSTRONG
CLERK OF COURT

2010 JUN 15 AM 10:41

FILED

The Plaintiff, complaining of the Defendant herein, would respectfully allege and show unto this Honorable Court as follows:

1. That the Plaintiff is a citizen and resident of the County of Richland, South Carolina.
2. That the Defendant, Michael T. Bolus, upon information and belief, is a citizen and resident of the County of Charleston, State of South Carolina.
3. That the Defendant held himself out to the community at large as a lawyer licensed to practice law in South Carolina under the rules and orders of the South Carolina Supreme Court and the South Carolina Bar Association guidelines for ethics and standards applicable to the practice of law.
4. That the Defendant, acting in his official capacity as an attorney with the law firm of Bolus & Bolus, herein law firm, did, on or about June 20, 2006, enter into a Legal Representation Agreement wherein and whereby the Plaintiff retained the services of the Defendant. A copy of the Legal Representation Agreement is attached hereto and incorporated herein by reference and marked exhibit 9. (R.pp. 156-158)

5. The Defendant represented and warranted to the Plaintiff that he was competent to represent Plaintiff in the Court of General Sessions and that the Plaintiff could trust him to manage his legal affairs fairly and diligently.
6. The Plaintiff, relying upon the express and implied representations of the Defendant, hired, retained and employed the Defendant on June 20, 2006, and entrusted his legal affairs to him solely.
7. There was at all times after June 20, 2006, attorney/client relationship between the Defendant and Plaintiff, a fiduciary relationship of trust and confidence, a relationship in which the Defendant was obligated to use his best judgment and apply his best skills to serve the Plaintiff's interest, a relationship which obligates the Defendant to make full disclosure of all matters related to the Plaintiff's affairs and to diligently, reasonably and efficiently apply his attention to the Plaintiff's legal affairs.
8. The acts or omissions of the Defendant are imputed to the law firm because the Defendant was the agent, servant, partner, associate or employee of the law firm and was at all times acting within the scope of his employment.
9. The acts or omissions of the Defendant are imputed to the law firm by operation of law because the law firm had actual and constructive knowledge of the Defendant's acts or omissions and, thereby, acknowledged, approved, tolerated and acquiesced in the Defendant's misconduct.
10. It was the duty of the law firm and the Defendant to disclose fully, in writing, any potential conflict of interest by the law firm and the Defendant representing the

Plaintiff in legal matters in which the law firm and/or the Defendant has represented the Plaintiff's spouse, ex-spouse or associates.

11. It was the duty of the law firm and the Defendant to inform, explain fully and justify all legal services charged to the Plaintiff.
12. It was the duty of the law firm to audit the Defendant's charges for legal fees to Plaintiff as it was the law firm's duty to manage, supervise and control all of its employees to prevent creating excessive, unjustified or unreasonable legal fees.

FOR A FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY OWED TO PLAINTIFF

13. Each and every allegation in paragraphs 1-12 above is to be considered as if restated verbatim herein.
14. The Defendant owed a fiduciary duty to the Plaintiff due to the attorney/client relationship established by the legal Representation Agreement affixed as exhibit 9. With this relationship established, the Plaintiff relied on the Defendant for his legal expertise and representation including, but not limited to, reaching a disposition of pending criminal charges against the Plaintiff.
15. The Plaintiff specifically relied on Defendant to protect his rights and guide him through the process of a criminal trial to reach the optimum outcome.
16. The Plaintiff specifically relied on the Defendant's knowledge and expertise regarding trial strategy.
17. The Plaintiff specifically relied on the Defendant's knowledge and expertise regarding all decisions during the trial process.

18. The Defendant and the law firm, by combination of their actions or ratification of each other's actions, expressly or impliedly breached their fiduciary duty to the plaintiff in the following ways, including, but not limited to:
- a. By failing to disclose or consult with the Plaintiff and obtain his consent regarding the Defendant's conflict of interest.
 - b. By failing to consult with the Plaintiff regarding a plea to a lesser included offense.
19. That as a direct and proximate consequence of said breaches by the Defendant, the Plaintiff has suffered damages as follows, including, but not limited to:
- a. Loss of income from his job as a licensed electrical contractor for the duration of his incarceration, valued at \$2,550,000.00.
 - b. Plaintiff has suffered sustained and extensive legal fees, pain, worry, anxiety, physical and emotional upset, and strain which, Plaintiff reasonably believes his injuries and damages will continue into the future.
 - c. Plaintiff prays this Honorable Court for a judgment in the amount of \$2,550,000.00 for lost wages, for an appropriate award of punitive damages, pre-judgment and post-judgment interest, and for such further relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT

20. Each and every allegation in paragraphs 1-19 above is to be considered as if restated verbatim herein.

21. The Plaintiff and Defendant, as demonstrated by exhibit 9, entered into an agreement for legal representation on or about June 20, 2006. (R. pp. 156-158).
22. Between 2007 and 2008, the Plaintiff and Plaintiff's ex-wife had litigation pending in family court. A bench warrant had been issued for Plaintiff's arrest.
23. In 2008, Plaintiff's ex-wife was arrested for driving under the influence, after which the Ms. Davis retained the Defendant as counsel.
24. The Defendant, knowingly, and with full awareness, entered into a representation agreement with Ms. Davis, rendering him unable to fulfill his duties to the Plaintiff, and thereby breaching the Legal Representation Agreement which existed between the Plaintiff and the Defendant. (See exhibit 115-lines 7-8) (R.p. 160).
25. As a direct and proximate consequence of the Defendant's breach of contract, the Plaintiff has been damaged and injured by incarceration, sustained and extensive legal fees, pain, worry, anxiety, physical and emotional upset, and strain, which Plaintiff reasonably believes his injuries and damages will continue into the future. Plaintiff prays this Honorable Court for an appropriate award of punitive damages against the Defendant.

FOR A THIRD CAUSE OF ACTION
LAWYER MALPRACTICE

26. Each and every allegation in paragraphs 1-25 above is to be considered as if restated verbatim herein.
27. On or about July 10, 2008, the Plaintiff discovered that the law firm and the Defendant deviated from the standard of care expected from all attorneys and

were otherwise careless, negligent, reckless, willful or wanton in one or more of the following particulars, to wit:

- a. The Defendant failed to motion the court to dismiss all charges after a motion for a speedy trial had been granted and, subsequently, expired.
- b. The Defendant failed to subpoena numerous witnesses whose testimony would have been favorable to the Plaintiff.
- c. The Defendant failed to challenge testimony presented by the prosecution which clearly contradicted previous testimony and written statements by the same witness.
- d. The Defendant failed to object when prosecution repeatedly fabricated information concerning the Plaintiff's prior criminal history.
- e. The Defendant failed to obtain medical information to corroborate or discount alleged physical injuries to the victim.
- f. The Defendant allowed the trial to proceed even though he had only received copies of state's exhibits 41-45 of the Brady materials. (Exhibits 41-45 were not received until the first day of trial).
- g. The Defendant allowed admission of images into evidence, without objection, that had not been provided to the defense with Brady materials.
- h. The Defendant failed to object to testimony concerning injuries which could not be corroborated.
- i. The Defendant failed to secure all the discovery materials, (Rule 5 Brady materials), before trial.

- j. The Defendant failed to withdraw his representation after willfully agreeing to represent the Plaintiff's ex-wife while litigation between the Plaintiff and his ex-wife was still pending.

As a direct and proximate consequence of the Defendants deviation from the standard of care, the Plaintiff has been injured and damaged by incarceration, sustained and extensive legal fees, pain, worry, anxiety, physical and emotional upset, strain and the loss of income, which Plaintiff reasonably believes his injuries and damages will continue into the future.

WHEREFORE, having fully set forth its complaint herein, the Plaintiff prays for judgment against the Defendant in the sum of \$2,550,000.00 for actual damages, an appropriate award for punitive damages and for such other and further relief as this Court may deem just and proper.

Clark D. Thomas

Clark D. Thomas #187845

Acting pro-se

BRCI Murray A-267

4460 Broad River Road

Columbia, SC 29210

June 02, 2010

Dated

GENERAL FACTUAL ALLEGATIONS

4. Defendant Michael T. Bolus admits the allegations of Paragraphs 1, 2, and 3 of Plaintiff's Complaint.

5. In answering the allegations in Paragraph 4 of Plaintiff's Complaint, Defendant Michael T. Bolus entered into a contractual agreement of legal representation with the Plaintiff, but in no way was there ever an agreement between an alleged "law firm" or "Bolus & Bolus" as there is no such legal, corporate, or partnership entity. The contract attached to the Complaint, known as Exhibit 9, in fact, is solely a contract between the Plaintiff and Michael T. Bolus, Attorney at Law, in his individual capacity as Defendant Michael T. Bolus is not a member of any "law firm". (R. pp. 156-158).

6. The Defendant Michael T. Bolus admits the allegations of Paragraphs 5 and 6 of Plaintiff's Complaint.

7. In answering the allegations of Paragraph 7 of the Plaintiff's Complaint, the Defendant Michael T. Bolus, admits only that he had an attorney-client relationship with the Plaintiff to represent him in matters only delineated in the Contract of Employment dated 6/20/06. All other allegations of Paragraph 7 are denied.

8. The Defendants deny the allegations of Paragraphs 8 and 9, as there is no entity known as "law firm" or "Bolus & Bolus" and therefore any actions of the Defendant Michael T. Bolus are strictly individual acts. No other agent, serving partner, associate, or employee of any alleged "law firm" known as "Bolus & Bolus" can be vicariously liable, as there is no such "law firm".

9. In answering the allegations in Paragraphs 10, 11, and 12 of Plaintiff's Complaint the Defendants deny that there was any duty of any alleged "law firm" to do anything for the Plaintiff, as no such law firm existed. The Defendant Michael T. Bolus admits that he had an obligation to represent the Plaintiff in this action to the best of his ability in the legal matter for

which the Defendant was hired. The Defendant would further show that the legal fee was very reasonable in light of the serious felony charges lodged against the Plaintiff. In further answering said allegations, the Defendant Michael T. Bolus denies that he acted in any capacity or manner that could render him liable or render any other Defendant or non-existent entity referred to as "Bolus & Bolus" or "law firm" liable.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

10. In response to Paragraph 13 of Plaintiff's Complaint, this Defendants repeat and re-allege every preceding Paragraph of this Answer is if restated herein verbatim.

11. In answering Paragraphs 14, 15, 16 and 17 Plaintiff's Complaint Defendant Michael T. Bolus denies the existence of any entity referred to as "Bolus & Bolus" and he further denies that he acted in any capacity or manner that could render this Defendant or any other Defendant or non-existent entity liable. Defendant Michael T. Bolus admits that he was the attorney for the Plaintiff;

12. In answering the allegations contained in Paragraphs 18 of Plaintiff's Complaint, the Defendant Michael T. Bolus denies the existence of the entity referred to as "law firm" or "Bolus & Bolus", or that this Defendant acted in any capacity or manner that could render this Defendant or any other Defendant or non-existent entity liable. This Defendant further denies the specific allegations of Paragraphs 18 (a) and (b).

13. The Defendants deny the allegations contained in Paragraph 19 in that any damages sustained by the Plaintiff were not the result of any negligent act on the part of the Defendant Michael T. Bolus, and that on further grounds that the damages as alleged by the Plaintiff are speculative.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Contract)

14. In response to Paragraph 20 of Plaintiff's Complaint, this Defendants repeat and re-alleges every preceding Paragraph of this Answer is if restated herein verbatim.

15. The Defendant Michael T. Bolus admits the allegations of Paragraphs 21, and 23 Plaintiff's Complaint.

16. In answering the allegations of Paragraph 22 of Plaintiff's Complaint, the Defendant is without sufficient information or knowledge regarding the alleged Family Court dispute between the Plaintiff and the Plaintiff's ex-wife, and would further show that he had no involvement in that matter.

17. The Defendant denies the allegations contained in Paragraphs 24 and 25 of Plaintiff's Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Legal Malpractice)

18. In response to Paragraph 26 of Plaintiff's Complaint, this Defendants repeat and re-alleges every preceding Paragraph of this Answer is if restated herein verbatim.

19. This Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint. In further response to Paragraphs 27, Defendant Michael T. Bolus denies the existence of the entity referred to as Bolus & Bolus or that Defendant Michael T. Bolus acted in any capacity or manner that could render him or any Defendant, or the nonexistent entity referred to as Bolus & Bolus liable. This Defendant further denies the allegations to the extent they state or imply any negligent act on the part of this Defendant Michael T. Bolus or the nonexistent entity referred to as Bolus & Bolus.

20. Defendants deny the Paragraph beginning "WHEREFORE", constituting the remainder of the Plaintiff's Complaint.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

21. Plaintiff has failed to attach an expert affidavit to the Complaint as required by South Carolina Code § 15-36-100 and the Complaint should be dismissed for failure to state a claim.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

22. At all relevant times, neither the entity referred to as "Bolos & Bolus" or "law firm" throughout Plaintiff's Complaint has existed or exists as a legal, corporate, or partnership entity, nor any other entity, association or relationship exists or has existed through which this Defendant or any other Defendant could be held directly or vicariously liable for any alleged acts or omissions of Defendant Michael T. Bolus.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

23. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

24. The process issued and/or service of process in the within action was insufficient and this action should be dismissed pursuant to Rules 12 (b) (4) and (5), SCRPC.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

25. The damages sustained by Plaintiff, if any, were due to, and caused by his own direct and intentional criminal acts, of which he was found guilty in the Ninth Judicial Circuit Court of General Sessions, and sentenced to prison. Furthermore, any damages sustained by the Plaintiff were the direct and proximate result of the Plaintiff's own negligence, and/or the intervening and superseding negligence of others, and Plaintiff's recovery, if any, should be barred or reduced as provided by law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

26. At all relevant times, Defendant Michael T. Bolus exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and in like circumstances.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

27. No act or omission of any Defendant was the cause of any damages to Plaintiff.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

28. Plaintiff's claims are or may be barred due to Plaintiff's failure to mitigate his damages as required by law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

29. Plaintiff's claims are or may be barred by the doctrines of waiver, estoppel, and/or laches.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

30. Plaintiff's claims are or may be barred by the doctrines of collateral estoppel and/or res judicata.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

31. Plaintiff's claims are or may be barred from recovery pursuant to the doctrine of unclean hands.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

32. Plaintiff's claims against the Defendants are barred to the extent relief is obtainable from other avenues.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

33. Plaintiff's Complaint fails to state a claim upon which punitive damages can be awarded and/or allege facts which, if proven, would entitle Plaintiffs to an award of punitive damages.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

34. Any award of punitive or exemplary damages in this action would be in violation of the rights of this Defendant under the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

35. The Defendants reserve any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the allegations of Plaintiff's Complaint, these Defendants pray that the Complaint be dismissed with prejudice, for all costs of the action to be cast upon the Plaintiffs, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

MICHAEL T. BOLUS

By: Michael T. Bolus Pro Se
MICHAEL T. BOLUS *Pro-Se*
State Bar No.: 760

Pro-Se Defendant for Michael T. Bolus

By: Michael T. Bolus atty.
MICHAEL T. BOLUS
State Bar No.: 760

Attorney for Bolus & Bolus Attorneys

2127 Dorchester Road
North Charleston, South Carolina 29405
(843) 747-1323

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2010-CP-10-4820
	)	
CLARK D. THOMAS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER OF KEITH BOLUS
	)	(Jury Trial Demanded)
BOLUS & BOLUS, ATTORNEYS,	)	
KEITH BOLUS, OFFICIALLY,	)	
MICHAEL T. BOLUS, OFFICIALLY	)	
AND INDIVIDUALLY,	)	
	)	
Defendants.	)	

Defendant Keith Bolus hereby responds to the above-captioned Plaintiff's Complaint as follows:

1. This Defendant denies each and every allegation not specifically herein admitted.
2. This Defendant denies the existence of the entity referred to as "Bolos & Bolus" or "law firm" throughout Plaintiff's Complaint or the existence of any other entity, association or relationship through which this Defendant could be held liable for any alleged acts or omissions of Defendant Michael T. Bolus. This Defendant further denies each and every allegation to the extent that it states or implies that Defendant Michael T. Bolus acted in any capacity or manner that could render this Defendant directly or vicariously liable or otherwise states or implies any liability on the part of this Defendant.

GENERAL FACTUAL ALLEGATIONS

3. Defendant is without sufficient knowledge and information to form an opinion as to Paragraph 1 of Plaintiff's Complaint, and to the extent a response is required, the allegations are denied.

4. Paragraphs 2 and 3 of Plaintiff's Complaint are not directed towards this Defendant and no response is required of him. To the extent this Defendant is required to respond, upon information and belief, the allegations are admitted.

5. In response to Paragraph 4 of Plaintiff's Complaint, this Defendant denies the existence of the entity referred to as Bolus & Bolus or that Defendant Michael T. Bolus acted in any capacity or manner that could render this Defendant or the nonexistent entity referred to as Bolus & Bolus liable. This Defendant further denies the allegations to the extent they state or imply any liability on the part of this Defendant or the nonexistent entity referred to as Bolus & Bolus. The remaining allegations contained in Paragraph 4 of Plaintiff's Complaint are not directed towards this Defendant and no response is required of him. To the extent this Defendant is required to respond, the allegations are denied.

6. Paragraphs 5, 6 and 7 of Plaintiff's Complaint are not directed towards this Defendant and no response is required of him. To the extent this Defendant is required to respond, the allegations are denied.

7. This Defendant denies the allegations contained in Paragraphs 8 and 9 of Plaintiff's Complaint. In further response to Paragraphs 8 and 9, this Defendant denies the existence of the entity referred to as Bolus & Bolus or that Defendant Michael T. Bolus acted in any capacity or manner that could render this Defendant or the nonexistent entity referred to as Bolus & Bolus liable. This Defendant further denies the allegations to the extent they state or imply any liability on the part of this Defendant or the nonexistent entity referred to as Bolus & Bolus.

8. Paragraphs 10, 11 and 12 of Plaintiff's Complaint contain statements or conclusions of law to which this Defendant is not required to respond. In further response to Paragraphs 10, 11 and 12, this Defendant denies the existence of the entity referred to as Bolus &

Bolus or that Defendant Michael T. Bolus acted in any capacity or manner that could render this Defendant or the nonexistent entity referred to as Bolus & Bolus liable. This Defendant further denies the allegations to the extent they state or imply any liability on the part of this Defendant or the nonexistent entity referred to as Bolus & Bolus.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

9. In response to Paragraph 13 of Plaintiff's Complaint, this Defendant repeats and re-alleges every preceding paragraph of this Answer is if restated herein verbatim.

10. Paragraphs 14, 15, 16 and 17 Plaintiff's Complaint are not directed towards this Defendant and no response is required of him. To the extent this Defendant is required to respond, the allegations are denied.

11. This Defendant denies the allegations contained in Paragraphs 18 and 19 of Plaintiff's Complaint. In further response to Paragraphs 18 and 19, this Defendant denies the existence of the entity referred to as Bolus & Bolus or that Defendant Michael T. Bolus acted in any capacity or manner that could render this Defendant or the nonexistent entity referred to as Bolus & Bolus liable. This Defendant further denies the allegations to the extent they state or imply any liability on the part of this Defendant or the nonexistent entity referred to as Bolus & Bolus.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Contract)

12. In response to Paragraph 20 of Plaintiff's Complaint, this Defendant repeats and re-alleges every preceding paragraph of this Answer is if restated herein verbatim.

13. Paragraphs 21, 22, 23, 24 and 25 Plaintiff's Complaint are not directed towards this Defendant and no response is required of him. To the extent this Defendant is required to respond, the allegations are denied.

AS TO THE THIRD CAUSE OF ACTION
(Legal Malpractice)

14. In response to Paragraph 26 of Plaintiff's Complaint, this Defendant repeats and re-alleges every preceding paragraph of this Answer is if restated herein verbatim.

15. This Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint. In further response to Paragraphs 27, this Defendant denies the existence of the entity referred to as Bolus & Bolus or that Defendant Michael T. Bolus acted in any capacity or manner that could render this Defendant or the nonexistent entity referred to as Bolus & Bolus liable. This Defendant further denies the allegations to the extent they state or imply any liability on the part of this Defendant or the nonexistent entity referred to as Bolus & Bolus.

16. This Defendant denies the Paragraph beginning "WHEREFORE," constituting the remainder of the Plaintiff's Complaint.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

17. Plaintiff has failed to attach an expert affidavit to the Complaint as required by South Carolina Code § 15-36-100 and should be dismissed for failure to state a claim.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

18. At all relevant times, neither the entity referred to as "Bolus & Bolus" or "law firm" throughout Plaintiff's Complaint, nor any other entity, association or relationship exists or has existed through which this Defendant could be held directly or vicariously liable for any alleged acts or omissions of Defendant Michael T. Bolus.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

19. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

20. The process issued and/or service of process in the within action was insufficient and this action should be dismissed pursuant to Rules 12(b)(4) and (5), SCRCp.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

21. The damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of Plaintiff's own negligence and/or the intervening and superseding negligence of others, and Plaintiff's recovery, if any, should be barred or reduced as provided by law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

22. At all relevant times, this Defendant exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and in like circumstances.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

23. No act or omission of this Defendant was the cause of any damages to Plaintiff.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

24. Plaintiff's claims are or may be barred due to Plaintiff's failure to mitigate his damages as required by law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

25. Plaintiff's claims are or may be barred by the doctrines of waiver, estoppel and/or laches.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

26. Plaintiff's claims are or may be barred by the doctrines of collateral estoppel and/or res judicata.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

27. Plaintiff's claims are or may be barred as to this Defendant because he was not a party to the subject contract referenced in the Complaint.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

28. Plaintiff's claims are or may be barred from recovery pursuant to the doctrine of unclean hands.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

29. Plaintiff's claims against this Defendant are or may be barred to the extent they seek recovery for breaches of duties of other Defendants or third-parties for whose conduct this Defendant is not responsible.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

30. Plaintiff's claims against this Defendant are barred to the extent relief is obtainable from other avenues.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

31. Plaintiff's Complaint fails to state a claim upon which punitive damages can be awarded and/or allege facts which, if proven, would entitle Plaintiffs to an award of punitive damages.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

32. Any award of punitive or exemplary damages in the this action would be in violation of the rights of this Defendant under the United States Constitution and the Constitution of the State of South Carolina.

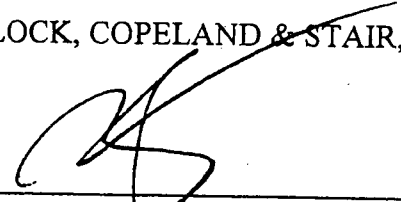
FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

33. This Defendant reserves any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the allegations of Plaintiff's Complaint, this Defendant prays that the Complaint be dismissed with prejudice, for all costs of the action to be cast upon the Plaintiff, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. McCALL
State Bar No.: 73028

Attorneys for Defendant Keith Bolus

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

vs.

BOLUS & BOLUS, ATTORNEYS,
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-4820NOTICE OF MOTION AND MOTION
DISMISS MICHAEL T. BOLUS2018 JUL 12 PM 4:15
J. ARMSTRONG
CLERK OF COURT

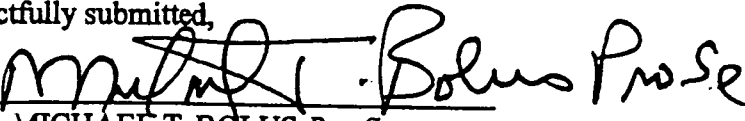
FILED

YOU WILL PLEASE TAKE NOTICE that Defendant Michael T. Bolus, Pro-Se, will move before the presiding Judge in the Court of Common Pleas for an Order dismissing the above-captioned case with prejudice. This Motion is brought pursuant to S.C. Code § 15-36-100 and Rules 12(b)(6) and 12(c) SCRCP, and upon such other law and argument as is appropriate. Defendant's Motion is based on the pleadings and one or more of the following grounds:

- (a) Plaintiff's failure to file an affidavit of an expert witness as part of the Complaint as required by S.C. Code § 15-36-100;
- (b) Plaintiff's failure to state a claim against Defendant Michael T. Bolus upon which relief can be granted;
- (c) Plaintiff's failure to allege any facts, show of entitlement, to relief or otherwise suspicion to constitute a cause of action against the Defendant, Michael T. Bolus;
- (d) Plaintiff's failure to allege his innocence of the underlying criminal matter pursuant to Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001); and

Respectfully submitted,

By:


 MICHAEL T. BOLUS Pro-Se
 State Bar No.: 760
Defendant Michael T. Bolus Pro-Se
 2127 Dorchester Road
 North Charleston, South Carolina 29405
 (843) 747-1323

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS

Plaintiff,

Vs.

BOLUS & BOLUS, ATTORNEYS
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants,

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-4820REPLY TO DEFENDANT'S
MOTION TO DISMISS
MICHAEL T. BOLUS2010 AUG 12 AM 11:12
JULIE J. ARISTON
CLERK OF COURT

FILED

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, Pro-se, Submits this Reply in accordance with Rule 12 (a) SCRPC, and now moves this Honorable Court to deny the Defendant's Motion to Dismiss Michael T. Bolus. Plaintiff's request for denial is founded on, but not limited to, the following:

—Reply to Expert Witness Argument (a)—

Preclusion of Affidavit Rule

S.C. Code §15-36-100 (C) (2): "The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." (emphasis added) The numerous averments as to the Defendants deficient conduct have been identified by the Plaintiff, as a layman, a person not a member of the legal profession or an expert in legal matters. As such, these deficiencies fall into the category of common knowledge and experience.

—Reply to Failure to State a Claim Argument (b)—

Facts and Reasonable Inferences

The United States Supreme Court has expressed that pro se litigants are to be held, “[T]o less stringent standards that formal pleadings drafted by lawyers.” Haines v. Kerner, 92 S. Ct. 594, 598 (1972). When a defendant alleges failure to state a claim, the pleading must be liberally construed in favor of the pleader and must be sustained if the facts and reasonable inferences to be drawn entitle him to relief on any theory of the case. Pinkington v. McBain, 262 S.E.2d 916, 274 S.C. 312 (1980); Pittman v. Galloway, 313 S.E.2d 632, 281 S.C. 70 (1984); Turner v. A B C Jalouse Co. of North Carolina Inc., 251 S.E.2d 528, 251 S.C. 92 (1968); Whale Brance Corp. v. Federal Land Bank of Columbia, S.C., 268 S.E.2d 583 (1980).

—Reply to Cause of Action Argument (c)—

Determination of Triable Issues

The defendant, seeking judgment in accordance with SCRCP 12(c) carries the burden of clearly establishing the absence of a genuine issue of material fact. “In determining whether any triable issues of fact exists, the evidence and all reasonable inferences therefore must be viewed in the light most favorable to the non-moving party.” Penny Creek Assoc., LLC v. Fenwick Tarragon Apartments, LLC, 375 S.C. 267, 634 S.E.2d 617, 620 (Ct. App. 2007) (citing Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 312 (2001)). Plaintiff is required to plead ultimate facts which will be proven at trial, not the evidence which will be used to prove the facts. Moore v. City of Columbia, 284 S.C. 278, 326 S.E.2d 157 (Ct. App. 1985); Clark v. Clark, 361 S.E.2d 328; Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973).

Resolution by Jury

It is only necessary for the non-moving party to submit a scintilla of evidence warranting determination by a jury for judgment to be denied. Hill v. York County Sheriff's Department,

313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993); see also: Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (clarifying and reaffirming in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment.) Furthermore, if a fact is well pleaded, any additional inferences of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moore, id.

Standards Imposed on the Pro Se Litigant

The United States Supreme Court has made known that they, “[D]o not impose on persons unlearned in the law the same high standards of the legal art that they might place on members of the legal profession.” Pollard v. United States, 352 U.S. 354, 363 (1957). While a pro-se litigant is not held to the same high standard as a member of the Bar but he must nevertheless meet certain standards, including any good faith attempt to comply with the rules of discovery and be present for trial. 3 S.C. Digest 2d 160 (2006). Plaintiff has met or exceeded the pleading requirements as outlined in Rule 8(a) SCRPC. Plaintiff further intends to prove, by preponderance of the evidence, that the Defendants conduct was deficient to the point of being obvious to a layman; and, that such deficiencies are drastic enough to severely affect the product of Defendant’s representation causing irreparable harm to the Plaintiff.

—Reply to Declaration of Innocence Argument (d)—

Extraneous Case Law

Unlike the matter of Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001)—wherein the Court dismissed Brown’s malpractice claim as a direct result of Brown’s no contest plea to the criminal charges against him—Plaintiff Clark Thomas demanded a trial by jury to

prove his innocence. That conviction is presently in direct appeal. Plaintiff has maintained his innocence from the moment these erroneous charges were placed against him.

Respectfully submitted,
Clark D. Thomas, pro se

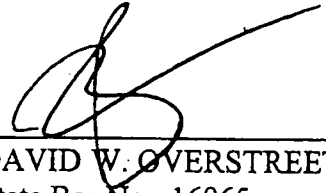
Clark D. Thomas
Clark D. Thomas #187845 *by Carolyn Cor*
Plaintiff—Pro se *Power of Attorney*
BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210

August 9, 2010

Richland, South Carolina

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. McCALL
State Bar No.: 73028

Attorneys for Defendant Keith Bolus

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS

Plaintiff,

vs.

BOLUS & BOLUS, ATTORNEYS
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants,

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-4820REPLY TO DEFENDANT'S
MOTION TO DISMISS
KEITH BOLUS2010 AUG 12 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, Pro-se, submits this Reply in accordance with Rule 12 (a) SCRCF, and now moves this Honorable Court to deny the Defendant's Motion to Dismiss Keith Bolus. Plaintiff's request for denial is founded on, but not limited to, the following:

—Reply to Expert Witness Argument (a)—

Preclusion of Affidavit Rule

S.C. Code §15-36-100 (C) (2): "The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." (emphasis added) The numerous averments as to the Defendants deficient conduct have been identified by the Plaintiff, as a layman, a person not a member of the legal profession or an expert in legal matters. As such, these deficiencies fall into the category of common knowledge and experience.

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Clark, 361 S.E.2d 328; Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973).

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—Reply to Declaration of Innocence Argument (d)—

Extraneous Case Law

Unlike the matter of Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001)—wherein the Court dismissed Brown's malpractice claim as a direct result of Brown's no contest plea to the criminal charges against him—Plaintiff Clark Thomas demanded a trial by jury to prove his innocence. That conviction is presently in direct appeal. Plaintiff has maintained his innocence from the moment these erroneous charges were placed against him.

—Reply to Vicarious Liability Argument (e)—

The Law Firm

The vicarious liability of the above named defendant, Keith Bolus, lies in his ownership, in whole or in part, of the business holding itself out to the public at large as "Bolus & Bolus". Being in a position of authority and responsibility, the acts or omissions of all persons employed with "Bolus & Bolus" are imputed to him by operation of law because he had actual and/or constructive knowledge of the defendant Michael T. Bolus' actions and thereby acknowledged, approved, tolerated and acquiesced to those actions.

Respectfully submitted,
Clark D. Thomas, pro se

Clark D. Thomas
Clark D. Thomas #187845
Plaintiff—Pro se
BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210
*by Carol Ann Cook
Power of Attorney*

August 9, 2010

Richland, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

vs.

BOLUS & BOLUS, ATTORNEYS,
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-4820NOTICE OF MOTION AND MOTION TO
DISMISS BOLUS & BOLUS2010 JUL 12 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

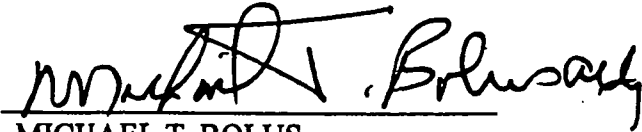
YOU WILL PLEASE TAKE NOTICE that Defendant Bolus and Bolus, a legally non-existent entity, by and through its undersigned attorney, will move before the presiding Judge in the Court of Common Pleas for an Order dismissing the above-captioned case with prejudice. This Motion is brought pursuant to Rules 12 (b), SCRPC and 12 (c), SCRPC, and such other law and argument as is appropriate. Defendant's Motion is based on the pleadings and one or more of the following grounds:

- (a) At all relevant times, neither the entity referred to as "Bolus & Bolus" or "law firm" throughout Plaintiff's Complaint, nor any other entity, association or relationship exists or has existed through which Defendant Michael T. Bolus or any other Defendant could be held directly or vicariously liable for any alleged acts or omissions of any lawyer in the non-existent entity known as "Bolus & Bolus" or "law firm". There is, in fact, no legal or corporate, or partnership entity known as "Bolus & Bolus".
- (b) Plaintiff's failure to file an affidavit of an expert witness as part of the Complaint as required by S.C. Code § 15-36-100;
- (c) Plaintiff's failure to state a claim upon which relief can be granted against the entity referred to as "Bolus & Bolus" or "law firm" throughout Plaintiff's Complaint;
- (d) Plaintiff's failure to allege any facts showing entitlement to relief or otherwise sufficient to constitute a cause of action against the entity referred to as "Bolus & Bolus" or "law firm" throughout Plaintiff's Complaint; and
- (e) Plaintiff's failure to allege his innocence of the underlying criminal matter pursuant to Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001).

SIGNATURE BLOCK ON FOLLOWING PAGE

Respectfully submitted,

MICHAEL T. BOLUS, ATTORNEY

By: 
MICHAEL T. BOLUS
Attorney for Defendant
Bolus & Bolus Attorneys
State Bar No.: 760

Attorney for Defendant Bolus & Bolus
Attorneys

2127 Dorchester Road
North Charleston, South Carolina 29405
(843) 747-1323

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. McCALL
State Bar No.: 73028

Attorneys for Defendant Keith Bolus

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CLARK D. THOMAS)
Plaintiff,)
Vs.)
BOLUS & BOLUS, ATTORNEYS)
KEITH BOLUS, OFFICIALLY,)
MICHAEL T. BOLUS, OFFICIALLY)
AND INDIVIDUALLY,)
Defendants,)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-4820

REPLY TO DEFENDANT'S
MOTION TO DISMISS
BOLUS & BOLUS

2010 AUG 12 AM 11:10
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, Pro-se, submits this Reply in accordance with Rule 12 (a) SCRPC, and now moves this Honorable Court to deny the Defendant's Motion to dismiss Bolus & Bolus. Plaintiff's request for denial is founded on, but not limited to, the following:

—Reply to *Bolus & Bolus* Argument (a)—

Communal Impression

The above named attorneys, Keith Bolus and Michael T. Bolus, have held themselves out to the community at large to be able, competent, licensed attorneys. Collaterally, by holding themselves out to the public as "Bolus & Bolus", they have implied that such an entity exists, and, that a person willing to engage in a business relationship with said attorneys would in fact be dealing with the entity of Bolus & Bolus as a whole. The inference drawn is that the independent attorneys comprise the entity of Bolus & Bolus, and, consequently, that Bolus & Bolus is ultimately responsible and accountable for the actions of its employees.

Master-Servant Relationship

In the presence of a prima facie case of the master-servant relationship, the burden of going forward with the evidence....shifts to the person denying the master-servant relationship” Cooper v. Graham, 231 S.C. 404, 414-415, 98 S.E. 2d 843 (1957); Norris v. Bryant, 217 S.C. 389, 60 S.E.2d 844 (1950); South Carolina Natural Gas Co. v. Phillips, 289 F.2d 143 (4th Cir. 1960). The reason for the shift of the burden is that the facts pertaining to the relationship lie “peculiarly within his (defendants) knowledge.” Cooper, supra at 414-415 (quoting from Embler v. Gloucester Lumber Company, 167, N.C. 457, 83 S.E. 740, 742 (1914). The South Carolina Supreme Court has taken broad view of estoppel, (by a three-judge majority), and based it on the unfairness of allowing the defendant to have the advantages of apparent control but not the responsibilities. Fernander v. Thigpen, 278 S.C. 140, 144-148, 293 S.E.2d 424, 427-429 (Littlejohn, J. dissenting 1982); Strickland v. Madden, 323 S.C. 63, 448 S.E.2d 581 (Ct. App. 1994).

Resolution by Jury

Furthermore, “[w]here the evidence warrants a reasonable inference that the master-servant relationship exists, the issue should be submitted to the jury.” Anderson v. West, 270 S.C. 184, 188, 241 S.E.2d 551 (1978); Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). “Generally, [q]uestions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to and inference of an agency relationship.” Fernander, supra.

Current Promotional Displays

The Defendant's Michael Bolus, Keith Bolus, and Bolus & Bolus, currently have a shingle suspended between two posts on the roadside in front of their primary place of business—located at 2127 Dorchester Road, North Charleston, SC—identifying this location as, *LAW OFFICES, M. TOMMY BOLUS (and) D. KEITH BOLUS, 747-1323* (Exhibit A, photos 2, 3, 6, 8). The sign attached to the structure on this property elucidates that these are the *BOLUS LAW OFFICES (of) D. KEITH BOLUS & M. TOMMY BOLUS*. The phone numbers displayed on this billboard are 588-6000—which is assigned to the Defendant's alternate place—and the consonant 747-1323. Of particular interest is the inclusion of an ampersand conjoining the Defendant's names (Exhibit A, photo 7)—suggesting an alliance.

The Defendant's ancillary site—located at 23½ Center Street, Folly Beach, SC—contemporarily maintains the placards that read *BOLUS LAW OFFICES* over the entrance (Exhibit A, photo 4)—and to the right of the ingress; that the attorneys are *D. KEITH BOLUS & M. TOMMY BOLUS* (Exhibit A, photos 3, 4, 5, 6). Please note the ubiquitous *ampersand*—and the absence of a disclaimer to the distinction that these attorneys practice law independently (Exhibit A, photos 1-8).

Online Publicity

An internet search conducted after the Defendant's filed their motions seeking dismissal of this action divulged four websites advertising the legal services of *Bolus & Bolus—Attorneys at Law*. The first of which depicts a logo embracing the slogan *We're here to help... that's a promise*. Within the description of services provided by this purported partnership is the enticing availability of *Over 50 Years of Combined Experience* (See Exhibit B). The address 2127 Dorchester Road, North Charleston, SC, and the phone number (843) 747-1323, is consistently

cited in each of these four websites as the method of contacting Michael Bolus and Keith Bolus
 (R. pp. 162-170)
 (See exhibits B,C,D,E). Please observe the omnipresent *ampersand* unifying the Defendants
 (Exhibits B,C,D). (R. pp. 162-169)

The Defendant's Website

The Defendant's presently maintain a website that—as recently as August 7, 2010—is
 (R. p. 170)
 accessed by the link *Boluslawfirm.com*. Contrary to every other mode the Defendants have
 employed to seek public awareness, their exclusive domain—enabling unlimited access to
 content modifications—does express that Michael and Keith Bolus work independently. Also
 unprecedented is the phone number 693-7189 offered as a direct connection to Keith Bolus; in
 addition to a cell number of 696-1651 to reach Michael Bolus. Under the circumstances at
 hand—wherein the Defendants have made a legally binding attestation that they have never
 operated under the guise of a *Law Firm*—Michael and Keith Bolus now have a vested interest in
 gaining divergence from the appellations of *Entity*, *Law Firm*, or *Partnership*.

Limited Ability to Alter

It is logical to presume that websites offering local attorneys a common platform to
 advertise can only be edited by the website proprietor. Under this stipulation—and the paucity
 of time to effect changes—it would explain why the Defendants were unable to announce the
 fresh idea of independence presently void in exhibits B-E. Equally forestalling is the suspicion
 that would be aroused by replacing the signs—that failed to reflect this disclaimer of
 (R. pp. 162-170)
 autonomy—as depicted in exhibit A. (R. p. 161) Unfortunately for the Defendants, proprietary time
 constraints have precluded a swift change to their internet address of *Boluslawfirm.com* as
 (R. p. 170)
 well—which clearly exposes the Defendant's purported status as a *Law Firm* prior to this
 lawsuit.

Definition of Terms

Bryan A. Garner Black's Law Dictionary, (9th ed. 2009) defines *Entity* as "[a]n organization that has a legal identity apart from its members or owners." Black's describes a *Law Firm* as "[a]n association of lawyers who practice law together, usu. Sharing clients and profits, in a business organized traditionally as a partnership but often today as either a professional corporation or a limited liability company. ..." Please note that the sharing of profits and clients is not a determining factor to consider. And lastly, Black's explains the meaning of a *Partnership* as "[a] voluntary association of two or more persons who jointly own and carry on a business for profit. ..." Notwithstanding the definitive terms associated with an *Entity* is the expressed ambiguity of the *Law Firm* and *Partnership* contentions. The dictions reflected in every medium of advertisement that the Defendants have engaged in—by definition—imply that *BOLUS & BOLUS* is both a partnership and law firm as the Defendants have clearly proclaimed that they practice law together.

Intrinsic Fraud

The Defendants have made the allegation that there is no legal or corporate, or partnership entity known as *Bolus & Bolus*. When presuming that the Defendant's use of the terms *legal* and *corporate* connotes that there are no official records to the semblance of these titles, it would appear that the Defendants duplicitous pleadings were contrived in a veiled attempt to avert the suspicion of intrinsic fraud. The South Carolina Supreme Court has determined that intrinsic fraud, "[I]s fraud that misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." Hilton Head Center v. Public Service Commission, 362 S.E.2d 176, 177 (S.C. 1987).

There is no reference made in the definitions supplied by *Black's* to *Entity*, *Law Firm*, or *Partnership*—methods of operation explicitly denied by the Defendant's—that relates to the procuring of a license, or that documents of incorporation must be filed before being recognized as an *Entity*, *Law Firm* or *Partnership*. These prevailing circumstances seem to affirm that intrinsic fraud has become a matter in need of some contemplation.

Inveigling Clients

(R. pp. 161-170)

In light of the evidence provided in exhibits A-F, the Defendants are indeed practicing law as a *Law Firm*. To rule in favor of the Defendant's motion to dismiss Bolus & Bolus would amount to a tacit sanction that subverts the protections afforded those that have legally established these operational ranks—and effectively upset the underpinnings of a corporate structure. Regardless of any mitigation claims, this procedural adulteration was clearly devised by the Defendants in a concerted effort to inveigle potential clients. The unambiguous suggestion that *Bolus & Bolus* offered the benefits and security of an established law firm was a determining factor in the Plaintiff's decision to retain Defendant Michael Bolus as his defense counsel. Analogous with the value of alluding to a partnership (See exhibits A,B,C,D,E,F), they should be required to accept the consequences of that misrepresentation.

(R. pp. 161-170)

—Reply to Expert Witness Argument (b)—

Preclusion of Affidavit Rule

S.C. Code §15-36-100 (C) (2): "The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed

to evaluate the conduct of the defendant.” (emphasis added) The numerous averments as to the Defendants deficient conduct have been identified by the Plaintiff, as a layman, a person not a member of the legal profession or an expert in legal matters. As such, these deficiencies fall into the category of common knowledge and experience.

—Reply to Failure to State a Claim Argument (c)—

Facts and Reasonable Inferences

The United States Supreme Court has expressed that pro se litigants are to be held, “[T]o less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 92 S.Ct. 594, 598 (1972). When a defendant alleges failure to state a claim, the pleading must be liberally construed in favor of the pleader and must be sustained if the facts and reasonable inferences to be drawn entitle him to relief on any theory of the case. Pinkington v. Mcbain, 262 S.E.2d 916, 274 S.C. 312 (1980); Pittman v. Galloway, 313 S.E.2d, 632, 281 S.C. 70 (1984); Turner, v. A B C Jalouise Co. of North Carolina Inc., 251 S.E.2d 528, 251 S.C. 92 (1968); Whale Brance Corp. v. Federal Land Bank of Columbia, S.C., 268 S.E. 2d 583 (1980).

—Reply to Cause of Action Argument (d)—

Determination of Triable Issues

The defendant, seeking judgment in accordance with SCRCP 12 (c) carries the burden of clearly establishing the absence of a genuine issue of material fact. “In determining whether any triable issues of fact exists, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party.” Penny Creek Assoc., LLC v. Fenwick Tarragon Apartments, LLC, 375 S.C. 267, 634 S.E.2d 617, 620 (Ct. App. 2007) (citing Osborne

ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 312 (2001).) Plaintiff is required to plead ultimate facts which will be proven at trial, not the evidence which will be used to prove the facts. Moore v. City of Columbia, 284 S.C. 278, 326 S.E.2d 157 (Ct. App. 1985); Clark v. Clark, 361 S.E.2d 328; Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973).

Resolution by Jury

It is only necessary for the non-moving party to submit a scintilla of evidence warranting determination by a jury for judgment to be denied. Hill v. York County Sheriff's Department, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993); see also: Hancock v. Mid-south Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (clarifying and reaffirming in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment.) Furthermore, if a fact is well pleaded, any additional inferences of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moore, id.

Standard Imposed on the Pro Se Litigant

The United States Supreme Court has made known that they, “[D]o not impose on persons unlearned in the law the same high standards of the legal art that they might place on members of the legal profession.” Pollard v. United States, 352 U.S. 354, 363 (1957). While pro-se litigant is not held to the same high standard as a member of the Bar but he must nevertheless meet certain standards, including any good faith attempt to comply with the rules of discovery and be present for trial. 3 S.C. Digest 2d 160 (2006). Plaintiff has met or exceeded the pleading requirements as outlined in Rule 8(a) SCRPC. Plaintiff further intends to prove, by preponderance of the evidence, that the Defendants conduct was deficient to the point of being obvious to a layman; and, that such deficiencies are drastic enough to severely affect the product

of Defendant's representation causing irreparable harm to the Plaintiff.

—Reply to Declaration of Innocence Argument (e)—

Extraneous Case Law

Unlike the matter of Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001)—wherein the Court dismissed Brown's malpractice claim as a direct result of Brown's no contest plea to the criminal charges against him—Plaintiff Clark Thomas demanded a trial by jury to prove his innocence. That conviction is presently in direct appeal. Plaintiff has maintained his innocence from the moment these erroneous charges were placed against him.

Respectfully submitted,
Clark D. Thomas, pro se

Clark D. Thomas
Clark D. Thomas #187845
Plaintiff—Pro se
BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210
*by Carolyn Cook
Power of Attorney*

August 9, 2010

Richland, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

vs.

BOLUS & BOLUS, ATTORNEYS,
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-48202011 FEB 17 AM 9:49
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS KEITH BOLUS**

Defendant Keith Bolus respectfully submits this Memorandum in Support of Motion to Dismiss.

Introduction

This is a legal malpractice action arising out of Tommy Bolus's representation of Plaintiff Clark D. Thomas in an underlying criminal matter. In June of 2006, Plaintiff Clark D. Thomas was charged with kidnapping, criminal domestic violence of a high and aggravated nature, and sexual battery of a spouse. *See State v. Clark D. Thomas*, 2006-GS-10-12295, -12296 and 2007-GS-10-3499. Thomas's mother Carol Ann Cook arranged for Tommy Bolus to represent him in the criminal matter, and Thomas subsequently executed a representation agreement on June 20, 2006. *See Correspondence and Representation Agreement (Complaint Exhibit)*. The case went to trial in July of 2008. Thomas was found guilty of kidnapping and criminal domestic violence of a high and aggravated nature and sentenced to 20 years for kidnapping and 10 years for domestic violence.

Plaintiff filed this lawsuit on June 15, 2010 against Tommy Bolus, Keith Bolus and "Bolus & Bolus" alleging that Tommy Bolus deviated from the standard of care in representing

him in the underlying criminal matter. The Complaint seeks damages for alleged professional negligence, but was filed without an expert affidavit as required by South Carolina Code § 15-36-100. Plaintiff has not since supplemented the Complaint with an affidavit or otherwise identified an expert witness, and the 45-day time limit for supplementing an affidavit has long since expired. Further, because this is a legal malpractice action arising out of a criminal matter, Plaintiff was required to allege his innocence of the underlying criminal charges pursuant to Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001), but has failed to do so in his Complaint. To the extent Plaintiff's Complaint survives these deficiencies, Defendants Keith Bolus and "Bolus & Bolus" should be dismissed due to Plaintiff's failure allege any facts that would support a cause of action against Keith Bolus or any liability on his part through the non-existent entity "Bolus & Bolus," as shown by Plaintiff's failure to even name Keith Bolus in a single paragraph in the Complaint.

STANDARD

A motion to dismiss for failure to state facts sufficient to constitute a cause of action is based solely upon the allegations in the complaint. Rule 12(b)(6), SCRCP; Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (S.C. 1995). "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (S.C. App. 1998).

When considering a motion for judgment on the pleadings pursuant to Rule 12(c), the court regards all properly pleaded factual allegations as admitted. Falk v. Sadler, 341 S.C. 281, 286, 533 S.E.2d 350, 354 (S.C. App. 2000). A motion for judgment on the pleadings will be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as

admitted, no cause of action is stated. Rosenthal v. Unarco Industries, Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (S.C. 1982).

ARGUMENT

I. Plaintiff Failed to Attach an Expert Witness to the Complaint.

Plaintiff's Complaint should be dismissed for failure to attach an expert affidavit as required by S.C. Code § 15-36-100. "[I]n an action for damages alleging professional negligence against [a licensed attorney at law] . . . the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." S.C. Code § 15-36-100. "If an affidavit is not filed . . . the complaint is subject to dismissal for failure to state a claim." Id.

Plaintiff contends in his Reply that an expert affidavit is not required because the allegations of negligence fall within the common knowledge exception to the expert affidavit statute, which provides:

The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

S. C. Code § 15-36-100(C)(2).

The application of the common knowledge exception is reserved for limited situations where the alleged professional negligence is "clear and obvious or where the lawyer's shortcomings would be plain to laymen without the testimony of those trained in the profession." Cianbro Corp. v. Jeffcoat & Martin, 804 F.Supp. 784, 791 (D.S.C. 1992). "Expert testimony is required in most legal malpractice cases because 'the jury cannot rationally apply a general

statement of the standard of care unless it is aware of what the competent lawyer would have done under similar circumstances.” Id.

[I]t is imperative that the plaintiff in a legal malpractice action be prepared to establish attorney negligence with expert testimony unless the alleged negligence is plainly obvious to all, and the plaintiff should not readily assume that the conduct about which he complains is plainly obvious. With this expert evidence, the jury is able to analyze the attorney’s conduct and measure it against the action that a competent attorney would be expected to take under the same circumstances. Without this evidence, the jury is improperly left to speculate as to the standard of conduct that the legal community should follow.

Id. at 793.

In arguing the common knowledge exception applies in this case, Plaintiff essentially contends that a jury would be able to properly evaluate the conduct of a criminal defense attorney in the course of defending felony charges of kidnapping, criminal domestic violence of a high and aggravated nature, and sexual battery of a spouse based upon their own common knowledge and experience. A review of the allegations in the Complaint shows this position is untenable.

Plaintiff’s allegations of purportedly negligent conduct involve several complex legal subject matters, including an alleged conflict of interest, plea negotiations on felony charges and lesser included offenses, and criminal defense trial tactics and trial strategy. Simply put, these are not matters within the common knowledge and experience of lay persons, but instead require a thorough understanding of procedural and substantive criminal law and the Rules of Professional Conduct. Plaintiff concedes as much in his Complaint, alleging that he specifically relied on Tommy Bolus’s knowledge and expertise regarding trial strategy and all decisions during the trial process (Complaint ¶¶ 16-17), but now argues that these are matters of common knowledge in an attempt to circumvent the expert affidavit statute.

(R. p. 8)

Without expert testimony in this case, a jury would be left to evaluate the conduct of a criminal defense attorney and determine the standard of care applicable to attorneys in this situation based upon their own common knowledge and experience. This is precisely why expert testimony is generally required in legal malpractice cases and consistent with the purpose of the expert affidavit statute.

Accordingly, because Plaintiff has not attached an expert affidavit as required by the statute, the Complaint should be dismissed for failure to comply with S.C. Code § 15-36-100.

II. Plaintiff Failed to Allege His Innocence in the Complaint.

In an action for legal malpractice evolving from a criminal matter, a complaint that fails to allege innocence is subject to dismissal for failure to state a cause of action. Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (S.C. 2001). In Brown, the criminal defendant brought a legal malpractice claim against his trial attorneys following his successful application for post-conviction relief, alleging that but for the attorneys' negligent representation, "he would have fared better at trial and would not have been convicted through a plea of no contest or otherwise." Id. at 305. However, Brown did not specifically allege in his malpractice complaint that he was innocent of the crimes for which he was convicted. In affirming the trial court's order granting the attorneys' 12(b)(6) motion, the Supreme Court of South Carolina began by noting that "in an action for legal malpractice based on conviction of a crime the general standard is the plaintiff must show innocence of the crime in order to establish liability." Id. at 306. The Court then examined Brown's complaint as follows:

Brown has not alleged he is innocent or even that he would have been acquitted if his Attorneys' had not committed the alleged malpractice. Brown's complaints do not allege facts that purport to show he is innocent of all the criminal charges filed against him. *Therefore, Brown's failure to plead innocence is fatal to his cause of action.*

Id. (emphasis added).

The significance of the Supreme Court's holding in Brown is even more apparent when read in conjunction with the opinion of the Court of Appeals, 338 S.C. 305, 526 S.E.2d 232 (S.C. App. 1999). In discussing the elements of a cause of action for legal malpractice, the Court of Appeals made a fundamental distinction between a "traditional legal malpractice action . . . involving an attorney's representation of a client in a civil matter" and one involving a criminal conviction, noting that in the latter, "criminal guilt or innocence is relevant to pleading and proving a legal malpractice cause of action evolving from a criminal matter" and that a plaintiff "needs to prove innocence of the crime as an element to the cause of action." Id. at 310. The Supreme Court specifically noted this was a correct statement of the law in affirming the decision of the Court of Appeals. 550 S.E.2d at 306.

The Brown decision sets forth a bright line requirement for pleading in criminal malpractice actions that a plaintiff must allege his innocence and set forth facts purporting to show his innocence. Failure to allege innocence amounts to failure to allege an essential element of a cause of action, and it is well-established that if a complaint omits a single element, it is facially defective and should be dismissed. *E.g.* Brown, 550 S.E.2d at 306 (innocence); United Educational Distributors, LLC v. Educational Testing Service, 350 S.C. 7, 564 S.E.2d 324 (S.C. App. 2002) (dismissing cause of action for interference with prospective contract pursuant to Rule 12(b)(6) for failure to allege the loss of an identifiable contract or expectation).

Accordingly, because Plaintiff has failed to allege his innocence in the Complaint or set forth any facts purporting to show his innocence, his action against should be dismissed in its entirety.

III. Plaintiff Has Failed to Otherwise State a Cause of Action Against Keith Bolus or "Bolus & Bolus."

To the extent the Complaint survives the deficiencies set forth above, Plaintiff has failed to state a cause of action against Keith Bolus or "Bolus & Bolus." The allegations in the Complaint solely relate to Tommy Bolus's representation of Plaintiff in the underlying criminal matter. Plaintiff fails to set forth any allegations against Keith Bolus whatsoever. In fact, Keith Bolus is not even referenced anywhere in the Complaint other than in the caption. Plaintiff does not allege that he entered into an attorney-client relationship with Keith Bolus or otherwise set forth any allegations from which a cause of action against Keith Bolus can be inferred.

The fact that Plaintiff named "Bolus & Bolus" as an additional defendant does not warrant a different result. While Plaintiff attempts to make a factual issue out of whether an implied partnership exists, it is unnecessary to reach this issue because Plaintiff failed to allege anywhere in the Complaint that Keith Bolus is even affiliated with the non-existent entity "Bolus & Bolus," and neither Keith Bolus nor "Bolus & Bolus" appear in the correspondence and representation agreement that Plaintiff attached as an exhibit to the Complaint. Simply naming Keith Bolus and "Bolus & Bolus" in the caption is not sufficient to state a cause of action against either.

As Plaintiff concedes in his Reply, he is required to plead ultimate facts which will be proven at trial, but there are no facts pled in his Complaint which relate to or even mention Keith Bolus, making it impossible to infer any cause of action against Keith Bolus individually or through the non-existent entity "Bolus & Bolus."

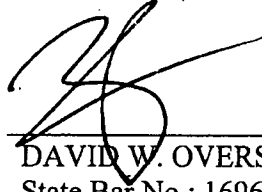
Accordingly, to the extent Plaintiff's Complaint is not dismissed in its entirety, Plaintiff has failed to state a claim Keith Bolus and the non-existent entity "Bolus & Bolus" and his purported claims against both should be dismissed.

CONCLUSION

For the foregoing reasons, Defendant Keith Bolus respectfully requests that this Court dismiss all claims in this action with prejudice.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. McCALL
State Bar No.: 73028

Attorneys for Defendant Keith Bolus

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

vs.

BOLUS & BOLUS, ATTORNEYS,
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-4826FILED
2011 MAR 21 PM 1:53
JULIE ARMSTRONG
CLERK OF COURT
BY**NOTICE OF MOTION AND MOTION TO
STRIKE AFFIDAVIT OF
WILLIAM GARY WHITE, III**

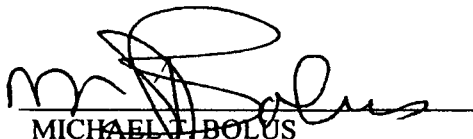
YOU WILL PLEASE TAKE NOTICE that Defendants Michael T. Bolus and Bolus and Bolus Attorneys, by and through Michael T. Bolus, *Pro-Se*, will move before the presiding Judge in the Court of Common Pleas on April 6, 2011 at 10:00 a.m. for an Order striking the Affidavit of William Gary White, III, filed by Plaintiff in the above-captioned case. This Motion is brought pursuant to S.C. Code § 15-36-100 and Rules 12(b)(6), 12(c) and 12(f), SCRPC, and upon such other law and argument as is appropriate. Defendant's Motion is based on the pleadings and one or more of the following grounds:

- (a) The affidavit, filed eight months after the filing of the Summons and Complaint, is untimely and was filed without leave of court, and should not be considered under any of the circumstances set forth in S.C. Code § 15-36-100;
- (b) The affiant, William Gary White, III, is currently suspended from the practice of law, (Exhibit A), and his affidavit does not contain a sufficient explanation of his credentials and why he is purportedly qualified to conduct the review, or otherwise contain sufficient information to show he is qualified as an "expert witness" for purposes of S.C. Code § 15-36-100; **(R. pp. 61-77)**
- (c) The affidavit fails to specify a negligent act or omission by omitting the appropriate standard of care and the requisite causal element that Plaintiff most probably would have been successful in the underlying criminal action; and
- (d) The affidavit is conclusory and speculative, and otherwise fails to satisfy the requirements of S.C. Code § 15-36-100 and applicable law as to each or any of the Defendants.

SIGNATURE BLOCK ON FOLLOWING PAGE

Respectfully submitted,

MICHAEL T. BOLUS

By: MICHAEL T. BOLUS
State Bar No.: 760Attorneys for Defendants Michael T. Bolus &
Bolus and Bolus Attorneys (a non-existent
entity)2127 Dorchester Road
North Charleston, South Carolina 29405
(843) 747-1323

The Supreme Court of South Carolina

In the Matter of William Gary
White, III,

Respondent.

ORDER

On March 7, 2011, respondent was definitely suspended from the practice of law for ninety (90) days. In the Matter of White, Op. No. 26939 (S.C. Sup. Ct. filed March 7, 2011) (Shearouse Adv. Sh. No. 8 at 47).

Accordingly, we hereby appoint an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that Ian Douglas McVey, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. McVey shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. McVey may make disbursements from

respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Ian Douglas McVey, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Ian Douglas McVey, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. McVey's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

March 7, 2011

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William Gary
White, III,

Respondent.

Opinion No. 26939
Heard February 1, 2011 – Filed March 7, 2011

DEFINITE SUSPENSION

Lesley Coggiola, Disciplinary Counsel, and Barbara
M. Seymour, Deputy Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

William Gary White, III, of Columbia, South
Carolina, pro se Respondent.

PER CURIAM: In this attorney disciplinary matter, the Commission on Lawyer Conduct ("Commission") investigated allegations of misconduct involving the Respondent, William Gary White, III, for his lack of civility and professionalism while handling a zoning dispute with the Town of Atlantic Beach ("Town"). The Office of Disciplinary Counsel ("ODC") filed formal charges against Respondent, and a Hearing Panel of the Commission recommended a definite suspension. We find Respondent has committed misconduct that warrants imposition of a definite suspension of ninety days and order Respondent to complete the Legal Ethics and Practice Program administered by the South Carolina Bar within six months of reinstatement.

I. FACTS

In 2004, Respondent represented the Atlantic Beach Christian Methodist Episcopal Church¹ ("Church") in a legal action it filed against the Town regarding a zoning dispute. The Town Attorney was Charles Boykin. The parties settled the action in 2007. As part of the settlement, the Church's action was dismissed, the Town paid damages to the Church, and the Church promised future compliance with all of the Town's building, permitting, and zoning requirements.

On April 30, 2009, Kenneth McIver, the new Town Manager, sent a notice about the need for zoning compliance to the owners of the Church property, Vonetta M. Nimocks and Eboni A. McClary ("Church's Landlords"). In his notice, McIver stated that as part of the prior settlement, "the judge ordered that the Church must comply with the Town's Zoning Ordinances and that a request for compliance must come from you, the owner[s]." McIver copied the notice to the Church's pastor, who gave it to Respondent.

On May 6, 2009, Respondent sent a letter about McIver's notice to the Church's Landlords. Respondent sent copies of his letter to McIver and Boykin. The remarks made by Respondent in his May 6th letter are the subject of this disciplinary proceeding. The letter reads in full as follows:

You have been sent a letter by purported Town Manager Kenneth McIver. The letter is false. You notice McIver has no Order. He also has no brains and it is questionable if he has a soul. Christ was crucified some 2000 years ago. The church is His body on earth. The pagans at Atlantic Beach want to crucify His body here on earth yet again.

We will continue to defend you against the Town's insane [sic]. As they continue to have to pay for damages they

¹ It also appears in the record as the Christian Methodist Episcopal Mission Church.

pigheadedly cause the church. You will also be entitled to damages if you want to pursue them.

First graders know about freedom of religion. The pagans of Atlantic Beach think they are above God and the Federal law. They do not seem to be able to learn. People like them in S.C. tried to defy Federal law before with similar lack of success.

McIver delivered the letter to the Town Council, and three council members thereafter filed a disciplinary complaint against Respondent. ODC instituted formal charges against Respondent as a result of his conduct.

At the hearing on June 8, 2010, counsel for ODC stated: "ODC alleges that [Respondent's] statements questioning whether Mr. McIver has a soul, saying that he has no brain, calling the leadership of the Town pagans and insane and pigheaded violates his professional obligations, which include his obligation to provide competent representation to his clients; his obligation under Rule 4.4 to treat third parties in a way that doesn't embarrass them; Rule 8.4 to behave in a way that doesn't prejudice the administration of justice; and also [] the letter was not in conformity with his obligations under his oath of office, Rule 402(k)."² Counsel for ODC further alleged that Respondent had failed to cooperate with disciplinary authority by refusing to answer the allegations against him, threatening to sue the complainants for filing the grievance, and questioning ODC's authority.

The Hearing Panel found that Respondent was subject to discipline under Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, for violating the following Rules of Professional Conduct (RPC) of Rule 407, SCACR: Rule 1.1 (competence), Rule 4.4 (respect for the rights of third persons), Rule 8.1 (knowing failure to respond to a lawful demand from a disciplinary authority), and Rule 8.4(e) (engaging in conduct prejudicial to the administration of justice).

² Rule 402(k)(3), SCACR provides every applicant for admission to practice law in this state must take and subscribe to the "Lawyer's Oath," by which the applicant pledges to act with "fairness, integrity, and civility, not only in court, but also in all written and oral communications." Id.

The Hearing Panel further found Respondent is subject to discipline for violating the following provisions of the RLDE contained in Rule 413, SCACR: Rule 7(a)(3), RLDE (knowing failure to respond to a lawful demand from a disciplinary authority); Rule 7(a)(5), RLDE (engaging in conduct tending to pollute the administration of justice, tending to bring the legal profession into disrepute, and demonstrating an unfitness to practice law); and Rule 7(a)(6), RLDE (violating the Lawyer's Oath taken upon the admission to practice law in South Carolina).

The Hearing Panel found three aggravating circumstances: Respondent's lack of remorse and unwillingness to acknowledge his wrongdoing, his extensive disciplinary history, and his "disregard and disrespect for these proceedings."

The Hearing Panel stated "Respondent offered no evidence in mitigation," but noted he did call his wife as a witness, who testified that she suffers from cancer. The Hearing Panel stated Respondent offered no evidence that his wife's condition impacted his conduct in any way and, further, Respondent's wife was not diagnosed until after he sent the May 6, 2009 letter, so the Hearing Panel did "not consider Respondent's wife's medical condition as a mitigating factor."

The Hearing Panel recommended that Respondent be suspended from the practice of law. Three members of the Hearing Panel recommended a one-year suspension; one member recommended a two-year suspension. The Hearing Panel recommended that Respondent be required to pay a fine and the costs of these proceedings. It also recommended that Respondent be ordered to complete the Legal Ethics and Practice Program administered by the South Carolina Bar as a condition of reinstatement.

II. LAW/ANALYSIS

Respondent has filed a brief opposing the Hearing Panel's recommended discipline, and ODC has filed a brief in support of the recommendations.

"The authority to discipline attorneys and the manner in which the discipline is given rests entirely with this Court." In re Tullis, 375 S.C. 190, 191, 652 S.E.2d 395, 395 (2007). The Court "has the sole authority . . . to decide the appropriate sanction after a thorough review of the record." In re Thompson, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000). "The Court is not bound by the panel's recommendation and may make its own findings of fact and conclusions of law." In re Hazzard, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008).

A disciplinary violation must be proven by clear and convincing evidence. In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006); see also Rule 8, RLDE, Rule 413, SCACR ("Charges of misconduct or incapacity shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on the disciplinary counsel.").

A. Rule 4.4(a), Respect for Rights of Third Persons

Rule 4.4(a) of the RPC provides in relevant part: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person" Rule 4.4(a), Rule 407, SCACR.

Respondent argues his letter served numerous purposes other than embarrassing others, such as serving as a "warning" that he would sue the Town "a fourth time," protecting his and his client's religious beliefs, and protecting the integrity of the courts. We agree with ODC and the Hearing Panel that it is clear Respondent's "substantial purpose" in making the remarks and copying the letter to the Town Manager and the Town Attorney was to intimidate and embarrass those he perceived as being contrary to his client's legal position.

Respondent argues the rule contains its own "safe harbor" that protects "uncivil" remarks when they serve other purposes. However, the fact that the letter could have served other purposes does not prevent his conduct from being in violation of Rule 4.4(a). See, e.g., In re Norfleet, 358 S.C. 39, 595 S.E.2d 243 (2004) (finding an attorney who became angry and spoke in a threatening manner to a school principal who refused to turn over a student's

file had violated Rule 4.4; the attorney was attempting to obtain the file for the otherwise legitimate purpose of using it in litigation).

Moreover, an attorney may not, as a means of gaining a strategic advantage, engage in degrading and insulting conduct that departs from the standards of civility and professionalism required of all attorneys. See In re Golden, 329 S.C. 335, 341, 496 S.E.2d 619, 622 (1998) (determining the attorney's conduct in questioning a witness by using sarcasm, unnecessary combativeness, threatening words, and intimidation served no legitimate purpose other than to embarrass, delay, or burden another person and, even if the witness was being uncooperative, it would not justify the attorney's insulting conduct, which was found to have "completely departed from the standards of our profession" as well as "basic notions of decency and civility").

It is clear from the record in this matter that Respondent sent the letter as a calculated tactic to intimidate and insult his opponents. Although Respondent maintains he used many of the words at the request of his client, the Church, Respondent cannot discharge his responsibility for his use of disparaging name-calling and epithets by simply stating he was asked to behave in this unprofessional manner by his client.

Respondent has also justified his conduct by arguing that he has a duty to provide zealous representation. We agree that an attorney has an obligation to provide zealous representation to a client. However, an attorney also has a corresponding obligation to opposing parties, the public, his profession, the courts, and others to behave in a civilized and professional manner in discharging his obligations to his client. Legal disputes are often emotional and heated, and it is precisely for this reason that attorneys must maintain a professional demeanor while providing the necessary legal expertise to help resolve, not escalate, such disputes. Insulting and intimidating tactics serve only to undermine the administration of justice and respect for the rule of law, which ultimately does not serve the goals of the client or aid the resolution of disputes.

B. Constitutional Arguments

To the extent Respondent argues the contents of his letter are protected by the United States Constitution by the First Amendment provisions for freedom of speech and freedom of religion, we conclude these rights do not prevent disciplinary action for an attorney's misconduct that is violative of the professional standards set by the courts.

"In the United States, the courts have historically regulated admission to the practice of law before them and exercised the authority to discipline and ultimately to disbar lawyers whose conduct departed from prescribed standards." Gentile v. State Bar of Nevada, 501 U.S. 1030, 1066 (1991).

"Membership in the bar is a privilege burdened with conditions,' to use the oft-repeated statement of Cardozo, J., in In re Rouss, 221 N.Y. 81, 84, 116 N.E. 782, 783 (1917), quoted in Theard v. United States, 354 U.S. 278, 281, 77 S.Ct. 1274, 1276, 1 L.Ed.2d 1342 (1957):" Id. "It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." Id. at 1071. Limitations on the free speech rights of attorneys are also recognized as to extrajudicial statements. See id. at 1075-77.

"States have a compelling interest in the practice of professions within their boundaries, and . . . as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions." Florida Bar v. Went For It, Inc., 515 U.S. 618, 625 (1995) (quoting Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975) (alteration in original)).

"Although a lawyer does not surrender her freedom of expression upon admission to the bar, once admitted, a lawyer must temper her criticisms in accordance with professional standards of conduct." Burton v. Statewide Grievance Committee, 830 A.2d 1205, 1211 (Conn. Super. Ct. 2002) (citing United States Dist. Court for the E. Dist. of Washington v. Sandlin, 12 F.3d 861, 866 (9th Cir. 1993)). "[T]here is a balancing of an attorney's right of free speech and the state's interest in preserving the integrity of the judicial system." Id. (citation omitted).

III. CONCLUSION

After considering the record in this matter, we conclude Respondent has committed misconduct in the respects identified by the Hearing Panel, except for the allegation regarding the failure to cooperate. We further find the Hearing Panel's suggestion of a definite suspension is appropriate under the circumstances.

Based on Respondent's blatant incivility and lack of decorum in this instance and the aggravating factors found by the Hearing Panel, including his disciplinary history, we impose a definite suspension of ninety days. We further order Respondent to complete the Legal Ethics and Practice Program administered by the South Carolina Bar within six months of reinstatement.³ Respondent's conduct in this matter reflects poorly on himself as a member of the legal profession and reflects negatively upon the profession as a whole. He represented to this Court at oral argument that in the future he will conduct himself in accordance with the RPC and treat all persons in a civil, dignified, and professional manner as is expected of all members of the South Carolina Bar. We expect nothing less.

DEFINITE SUSPENSION.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

³ We decline the recommendation of the Hearing Panel to impose a fine or costs.



South Carolina
Judicial Department

Site Map

26482 - In the Matter of William Gary White, III

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of William Gary White, III, Respondent.

Opinion No. 26482
Heard April 1, 2008 – Refiled June 23, 2008

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, C. Tex Davis, Jr.,
Senior Assistant Disciplinary Counsel, of Columbia; for
Office of Disciplinary Counsel.

Irby E. Walker, Jr., of Conway; for Respondent.

PER CURIAM: This is an attorney disciplinary matter involving a Complaint against William Gary White, III (Respondent) for his representation of a client in a personal injury case. After a full investigation by the Office of Disciplinary Counsel (ODC), the Commission on Lawyer Conduct filed formal charges against Respondent. After a hearing before the Commission on Lawyer Conduct Panel (Panel), the hearing panel recommended Respondent be sanctioned to a ninety-day definite suspension from the practice of law and be required to pay the costs of the proceedings. Due to the gravity of Respondent's misconduct, we believe a harsher sanction is warranted. After we issued our original opinion suspending Respondent for six months and ordering him to pay the costs of the proceedings, Disciplinary Counsel petitioned for rehearing. We deny the petition for rehearing, withdraw our original opinion in this matter, and substitute it with this opinion which corrects a single factual statement that Respondent gave testimony to Disciplinary Counsel pursuant to a Notice to Appear and Subpoena rather than appearing as the "sole witness for a hearing conducted by disciplinary counsel before an investigative panel."

FACTS

On October 5, 2004, Client was involved in an automobile accident in which she sustained injuries. Three days later, Client sought to retain Respondent to represent her to recover for her injuries and property damage. During the initial meeting, Client signed a retainer agreement which stated in part, "I authorize my attorney to receive settlement checks on my behalf, endorse my name and deposit same for distribution."

In the latter part of July 2005, Respondent negotiated a settlement with GEICO in the amount of \$5,500. In a letter dated August 3, 2005, GEICO submitted a Release to Respondent and referenced a settlement check. According to the letter, the settlement check dated August 3, 2005, had been sent under a separate cover. The letter instructed Respondent to hold all funds in escrow until Respondents' clients had signed and returned the Release to GEICO. The Release and settlement check were to be signed by Client and her husband. Client's husband was not represented by Respondent and had never accompanied his wife to any of her meetings with Respondent. Upon receipt of the check, Respondent endorsed it by signing his name, Client's name, and her husband's name. Respondent deposited the check into his trust account and then disbursed his legal fees from the settlement proceeds and transferred the amount into his operating account.

On August 22, 2005, Client met with Respondent who informed her that the case was closed and there was nothing else that could be done despite Client's complaints that she was still in pain and receiving medical treatment. Client expressed dissatisfaction with the settlement and ceased any further contact with Respondent. In December 2005, Respondent's office contacted Client in a failed attempt to get Client to pick up her settlement check.

In May 2006, Client retained another attorney (Attorney) to represent her in a legal malpractice action against Respondent and to further pursue her personal injury claim. During Attorney's investigation of the personal injury case, she discovered from GEICO that a Release had not been signed. Because Respondent had retained the settlement proceeds, Attorney corresponded in writing with him requesting that he return the proceeds to GEICO in order that she could settle Client's case. In his responses, Respondent claimed that Client had authorized him to settle the case and he was not required to return the funds. Respondent also challenged Attorney's allegation that Client had an additional claim and implied that such a claim would be fraudulent.

Ultimately, Respondent returned the settlement proceeds to GEICO less his fee of \$1,879.75. Following the return of the funds, Attorney negotiated a settlement of \$15,000 from GEICO less the fees retained by Respondent. Attorney also settled with State Farm, Client's insurance carrier, for \$50,000, which represented her underinsured coverage. This settlement took into account the medical bills that Client acquired after she terminated her representation with Respondent, which included a rotator cuff surgery in September 2005 for an injury attributed to the October 2004 automobile accident.

Due to Respondent's conduct, Client filed a Complaint against Respondent with the ODC. On May 25, 2006, ODC notified Respondent regarding the investigation of Client's Complaint. Respondent filed a response to the notice on June 22, 2006. On November 30, 2006, Respondent gave testimony to Disciplinary Counsel pursuant to a Notice to Appear and Subpoena.

Based on its investigation, the investigative panel authorized formal charges against Respondent. The ODC filed formal charges against Respondent on March 22, 2007. In his Response to the charges, Respondent admitted he: (1) had negotiated the settlement on behalf of Client; and (2) endorsed the settlement check with his name and Client's name. Because he believed that Client had authorized him to settle her case, he denied any misconduct. Although he neither admitted nor denied signing Client's husband's name, he admitted that he deposited the settlement check in his trust account and transferred the amount of his legal fees into his operating account. He further admitted that at the time of the disbursement of the legal fees Client had not signed any type of settlement or disbursement sheet.

At the hearing before the Panel, the following witnesses were presented: Client, Client's husband, Attorney, and another witness (Witness A)[1] who recounted Respondent's actions.

Respondent gave a different account of his representation of Client. Respondent, a sole practitioner, testified he had practiced law for thirty-one years during which time he had handled personal injury cases. In terms of representing Client, Respondent testified he felt Client was "anxious to settle" given she frequently called his office to inquire about a settlement. Because he believed that Client was released from medical treatment on July 8, 2005[2], he pursued a settlement with GEICO in the latter part of July 2005. According to Respondent, Client authorized him to settle her case for \$6,000. Respondent claimed he entered into an agreement with GEICO to settle the case after several failed attempts to consult with Client regarding a settlement. He further stated that in all of his years of practice he had never settled a claim without his client's permission.

Respondent admitted that after receiving the settlement check from GEICO he signed Client's name to the check. Although he could not specifically recall signing Client's husband's name to the check, he testified that if he signed the check it was done without a fraudulent intent. Respondent further admitted he deposited the settlement check in his trust account and transferred the amount of his legal fees into his operating account. Respondent believed this conduct was permissible and not in violation of GEICO's instructions because he received the settlement check prior to receiving GEICO's letter. Respondent further testified he did not believe any of his conduct, while representing Client, was unethical.

On cross-examination, Respondent admitted he sent a medical release to Client's orthopedist on August 22, 2005, in which he requested Client's medical records from August 1, 2005. Respondent was unable to explain why he made this request after he entered into a settlement agreement with GEICO in July 2005. In terms of endorsing the settlement check, Respondent conceded that he was not authorized to sign for Client's husband; however, he claimed he did so because he was concerned about losing the check before it was properly endorsed.

After the hearing, the Panel found Respondent engaged in misconduct in violation of the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1, RPC (Competence); Rule 1.2, RPC (Scope of Representation); Allocation of Authority between Client and Lawyer); Rule 1.4, RPC (Communication); Rule 1.5 (Fees); Rule 1.15, RPC (Safekeeping Client's Property); and Rules 8.4(d) and (e), RPC (Misconduct). The Panel recommended that Respondent be suspended for a period of ninety days and pay the costs of the proceedings.

DISCUSSION

Although Respondent raises eleven exceptions to the Panel's report, we believe Respondent is essentially challenging the Panel's: (1) factual findings; (2) decision regarding the exclusion of certain testimony; and (3) imposition of a ninety-day suspension.

"This Court has the sole authority to discipline attorneys and to decide the appropriate sanction after a thorough review of the record." In re Thompson, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000). "Although this Court is not bound by the findings of the Panel and Committee, these findings are entitled to great weight, particularly when the inferences to be drawn from the testimony depend on the credibility of witnesses." In re Marshall, 331 S.C. 514, 519, 498 S.E.2d 869, 871 (1998). "However, this Court may make its own findings of fact and conclusions of law." Id. Furthermore, a disciplinary violation must be proven by clear and convincing evidence. In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006).

I. Factual Findings

In terms of the Panel's factual findings, Respondent contends the Panel erred in: (1) finding that his testimony was not credible; (2) placing emphasis on the fact that he settled the case for less than Client had authorized; (3) finding he violated GEICO's instructions to hold the settlement proceeds in escrow until the Release was signed by Client and her husband; (4) finding he did not have proper authorization from Client to settle her case; (5) finding he failed to present Client with any settlement or disbursement statement; (6) placing emphasis on the fact that he obtained medical releases from Client after the case was settled; and (7) making a statement that Respondent's failure to promptly return the settlement proceeds to GEICO after requested to do so by Attorney caused the Panel "grave concern."

The Panel prefaced its decision with a specific finding that Respondent's testimony was not credible. Because the inferences drawn from testimony in the record depended largely on the credibility of the witnesses, we believe this finding by the Panel is significant in terms of assessing Respondent's exceptions to the Panel's ultimate decision.

Deferring to the Panel on its credibility determination, we find there is evidence to support each of the factual findings challenged by Respondent. First, Client denied ever authorizing Respondent to settle her case for \$6,000. Thus, the Panel's emphasis on the fact that Respondent settled Client's claim for less than \$6,000 does not establish error on the part of the Panel as argued by Respondent. Instead, the Panel's finding was merely intended to support its determination as to Respondent's credibility.

Secondly, Respondent admitted that he endorsed the settlement check, deposited it into his trust account, and transferred his legal fees to his operating account. Clearly, Respondent's actions were in direct violation of the instructions by GEICO that Respondent retain the settlement proceeds in his trust account until the parties signed and returned the Release. Even if, as Respondent contends, the settlement check was received prior to the GEICO instruction letter, this would not negate Respondent's misconduct. Once he received the letter, Respondent should have withdrawn his legal fees from the operating account and transferred them back to his trust account. Furthermore, Respondent was aware on August 22, 2005, that Client did not intend to sign the GEICO release. Thus, per GEICO's instruction, Respondent should have returned his legal fees to his trust account until the matter was resolved. As of the date of the Panel hearing on June 27, 2007, Respondent still retained the amount of his legal fees in his operating account.

Thirdly, again deferring to the Panel's credibility determination, there is evidence to support the Panel's finding that Respondent did not have proper authorization to settle Client's case. Respondent's reliance on his retainer agreement to support his decision to settle the case is misplaced. The terms of the retainer agreement only authorized Respondent to receive a settlement check and endorse a client's name if the client agreed to the proposed settlement. Here, Client adamantly denied authorizing Respondent to settle her case.

Fourthly, there is evidence to support the Panel's finding that Client had not signed any settlement or disbursement statement. Respondent admitted that Client never signed a release for the settlement check.

Moreover, even at their last meeting on August 22, 2005, Client expressed dissatisfaction with the settlement, did not sign any documents, and ceased all further contact with Respondent.

Fifthly, there is evidence to support the Panel's finding that Respondent sought to obtain medical releases for Client's records after the case was settled. Respondent believes this finding was irrelevant to a determination of misconduct. We believe the Panel's finding was intended to establish that Respondent was not a credible witness. Respondent never adequately explained his decision to seek a medical release to obtain Client's medical records in August 2005 after he had settled the case in July 2005. According to Respondent, he claimed he had in his possession all of Client's medical records at the time he entered into the settlement agreement. Respondent also testified that he informed Client on August 22, 2005, that the case had been settled and nothing could be done regarding any additional medical treatment for her injuries. Thus, the fact that he requested additional medical records after the settlement and this meeting created a discrepancy in Respondent's testimony and would again draw into question his credibility.

Finally, the Panel was justified in expressing concern over the fact that Respondent declined to promptly return the settlement proceeds to GEICO when requested by Attorney. Respondent admitted that Client never signed a settlement release. He also knew of the correspondence between Attorney and GEICO regarding a potential settlement of Client's claim. Therefore, Respondent was aware that Client's personal injury claim with GEICO had not been finalized. Despite this knowledge, Respondent delayed returning the funds to GEICO. Additionally, Respondent never relinquished the amount of his attorney fees even though he failed to procure a final settlement for Client. Respondent's failure to promptly return the entire amount of the settlement proceeds impeded Attorney's progress in pursuing Client's claim with GEICO.

II. Exclusion of Testimony

Respondent contends the Panel erred in ruling that neither he nor his proposed witness (Witness B) could testify regarding problems Respondent encountered with Attorney prior to his representation of Client.

At the start of the hearing, Respondent's counsel indicated that he intended to call Witness B, a former client of Attorney's and a member of Respondent's office staff who was also his client. According to Respondent's counsel, Witness B was to testify regarding the "bad blood" that existed between Respondent and Attorney prior to the Client matter. Counsel also intended to elicit testimony from Witness B regarding a grievance she had filed against Attorney. Disciplinary counsel objected to the admission of this testimony on the ground it was irrelevant to a determination of Respondent's alleged misconduct. After hearing arguments from counsel, the Panel ruled that Respondent's counsel could not present any testimony regarding a grievance against Attorney and needed to limit the testimony to only the interactions between Attorney and Respondent regarding the Client matter.

Unless provided otherwise in a specific rule, the South Carolina Rules of Evidence for non-jury civil matters and the South Carolina Rules of Civil Procedure apply to lawyer disciplinary proceedings. Rule 413, SCACR; Rule 9, RLDE. We hold the Panel properly limited the proposed testimony on the ground that it was not relevant. See Rule 401, SCRE ("Relevant" evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible."). Because the Panel was only considering the formal charges against Respondent, the testimony presented was properly confined to Respondent's representation of Client. Furthermore, given that Attorney was called as a witness, Respondent's counsel was able to attack her credibility and establish any potential bias or prejudice she may have had against Respondent.

III. Ninety-Day Suspension

Finally, Respondent challenges the Panel's recommendation of a ninety-day suspension. He contends the recommendation was not warranted because: (1) his endorsement of Client's husband's name on the GEICO settlement check was "either harmless error, or such an error as should not cause a suspension of his license;" and (2) the evidence did not support the Panel's findings that he committed several serious breaches of ethical conduct in violation of the Rules of Professional Conduct.

A.

In its report, the Panel concluded that Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1, RPC ("A lawyer shall provide competent representation to a client. Competent representation

requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); Rule 1.2, RPC ("Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to make or accept an offer of settlement of a matter."); Rule 1.4, RPC (providing that a lawyer shall keep the client informed and consult with the client regarding means by which client's objectives are to be accomplished); Rule 1.5, RPC (stating that "[u]pon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination"); Rule 1.15, RPC (providing that a lawyer shall: safeguard client's property; deposit unearned legal fees into client trust account; and render full accounting regarding client's property); Rule 8.4(d), RPC (stating it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation"); and Rule 8.4(e), RPC (stating it is professional misconduct for a lawyer "engage in conduct that is prejudicial to the administration of justice").

We hold there was clear and convincing evidence that Respondent violated each of the above-listed Rules of Professional Conduct. Deferring to the credibility determination of the Panel, Client testified she never authorized Respondent to settle her case. Yet, Respondent settled Client's claim without her consent and despite the knowledge that she was still receiving medical treatment for her injuries. We find this conduct was in violation of Rule 1.1 (Competence); Rule 1.2 (Scope of Representation; Allocation of Authority between Client and Lawyer); and Rule 1.4 (Communication). Furthermore, Respondent engaged in fraudulent conduct in violation of Rule 8.4 (d) when he signed Client's husband's name to the settlement check without his consent and without an agreement to represent him. In terms of Respondent's handling of the settlement proceeds, Respondent's decision to negotiate the settlement check in violation of GEICO's instructions and to disburse his legal fees to his operating account constitutes a violation of Rule 1.5 (procedure lawyer should follow after conclusion of contingent fee matter) and Rule 1.15 (safekeeping client's property). Finally, Respondent's failure to promptly return the entire amount of the settlement proceeds to GEICO prevented Attorney from expeditiously pursuing Client's personal injury claim; therefore, we find this conduct was in violation of Rule 8.4(e) (conduct which is prejudicial to the administration of justice). Although not listed by the Panel, we also find this conduct violated Rule 1.16(d) ("Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. The lawyer may retain a reasonable nonrefundable retainer.").

With respect to the Panel's recommendation of a ninety-day suspension, there is precedent to establish that this sanction is within the range this Court has imposed in the past where attorneys have engaged in similar misconduct. However, due to Respondent's egregious conduct and the fact that he has been sanctioned by this Court in the past,^[3] we find the Panel's recommendation is inadequate and a harsher sanction is warranted. Therefore, we hereby sanction Respondent to a six-month definite suspension and order him to pay the costs of the proceedings. See, e.g., In re Nwangaza, 362 S.C. 208, 608 S.E.2d 132 (2005) (finding public reprimand was warranted, upon submission of agreement, where attorney negotiated personal injury settlement check without client's consent/endorsement; deposited proceeds into trust account; issued a check for client's medical provider and withdrew her contingency fees; and failed to maintain the appropriate balance in her trust account until the dispute over the fees in a domestic matter was resolved); In re Williams, 336 S.C. 578, 521 S.E.2d 497 (1999) (accepting parties' agreement and holding that public reprimand was warranted where attorney: failed to properly safeguard his client's property by neglecting to promptly notify his client of settlement and fraudulently endorsing settlement check; failed to use proper accounting methods; failed to keep his client reasonably informed about status of case; failed to comply with demand for payment; made false statements to the Commission on Lawyer Conduct and other party in suit; and created a false Disbursement Sheet); In re Belding, 356 S.C. 319, 589 S.E.2d 197 (2003) (finding one-year suspension was appropriate sanction where attorney: settled case without first obtaining client's consent; drafted false documents which included names of real lawyers and a judge; failed to inform client regarding status of case; and failed to take steps to protect his client's interest after he attempted to be relieved as counsel following a "charade to conceal his mistakes"); In re Lewis, 344 S.C. 1, 542 S.E.2d 713 (2001) (holding attorney's engaging in improper banking practices, misappropriating client funds, signing clients' names to settlement documents and checks without clients' knowledge or consent, making false statement to disciplinary counsel, and violating financial record keeping warranted disbarment); In re Ring, 320 S.C. 249, 464 S.E.2d 328 (1995) (concluding sanction of disbarment warranted where: attorney settled case without client's authorization; forged client's signature; failed to keep client informed or respond to client's inquiries;

misappropriated client funds; terminated representation without taking steps to protect client's interests; issued a bad check; and failed to cooperate in investigation); In re Smith, 310 S.C. 449, 427 S.E.2d 634 (1992) (holding disbarment was appropriate sanction where attorney: entered into settlement without client's consent and negotiated settlement check by forging client's signature; improperly handled client funds; failed to deliver property to client; failed to notify client of receiving funds in which client had an interest; made false statements to third party and Board; failed to cooperate with investigation; failed to competently and diligently represent clients; and improperly disclosed client confidence).

CONCLUSION

In view of the gravity of Respondent's misconduct, we hereby suspend Respondent from the practice of law for six months. Additionally, we order Respondent to pay costs associated with this proceeding within ninety days of the filing of this opinion. Within fifteen days of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.

[1] Witness A, who worked for Respondent as an administrative assistant during the Client matter, testified she had been present when Respondent returned phone calls to Client. She further testified she spoke with Client several times a week regarding her case. Additionally, she claimed Client had told her that she had been released from her doctor prior to August 2005. However, Witness A stated Client never told her that she wanted to settle her case.

[2] Respondent offered into evidence a message from his office phone log on July 8, 2005, stating that Client was released from the doctor and ready to proceed. Respondent claimed to have Client's medical bills prior to entering into the agreement with GEICO.

[3] See In re White, 328 S.C. 88, 492 S.E.2d 82 (1997) (holding public reprimand was warranted for attorney's improperly retaining client file, ex parte communication with the court, and commingling personal funds with client trust funds).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2010-CP-10-4820
	)	
CLARK D. THOMAS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION TO
	)	STRIKE AFFIDAVIT OF
BOLUS & BOLUS, ATTORNEYS,	)	WILLIAM GARY WHITE, III
KEITH BOLUS, OFFICIALLY,	)	
MICHAEL T. BOLUS, OFFICIALLY	)	
AND INDIVIDUALLY,	)	
	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that Defendant Keith Bolus, by and through his undersigned attorneys, will move before the presiding Judge in the Court of Common Pleas for an Order striking the Affidavit of William Gary White, III, filed by Plaintiff in the above-captioned case. This Motion is brought pursuant to S.C. Code § 15-36-100 and Rules 12(b)(6), 12(c) and 12(f), SCRPC, and upon such other law and argument as is appropriate. Defendant's Motion is based on the pleadings and one or more of the following grounds:

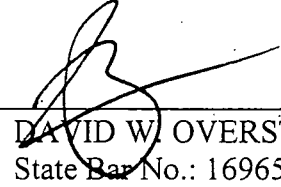
- (a) The affidavit, filed eight months after the filing of the Summons and Complaint, is untimely and was filed without leave of court, and should not be considered under any of the circumstances set forth in S.C. Code § 15-36-100;
- (b) The affiant, William Gary White, III, is currently suspended from the practice of law, (Exhibit A), and his affidavit does not contain a sufficient explanation of his credentials and why he is purportedly qualified to conduct the review, or otherwise contain sufficient information to show he is qualified as an "expert witness" for purposes of S.C. Code § 15-36-100; **(R. pp. 61-71)**
- (c) The affidavit fails to specify a negligent act or omission by omitting the appropriate standard of care and the requisite causal element that Plaintiff most probably would have been successful in the underlying criminal action; and
- (d) The affidavit is conclusory and speculative, and otherwise fails to satisfy the requirements of S.C. Code § 15-36-100 and applicable law as to each or any of the Defendants.

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Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. McCALL
State Bar No.: 73028

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(843) 727-0307

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

v.

BOLUS & BOLUS, ATTORNEYS
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants,

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICAL CIRCUIT
Case No.: 1010-CP-10-4820

**RETURN TO MOTION
TO STRIKE AFFIDAVIT OF
WILLIAM GARY WHITE, III**

JULIE J. ARMSTRONG
CLERK OF COURT

2011 MAR 29 AM 11:48

FILED

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, Pro se, in accordance with Rule 12 (a), SCRCP, submits this Return and now moves this Honorable Court to deny Defendant Keith Bolus', Michael Bolus', and Bolus & Bolus' Motion to Strike Affidavit of [Attorney] William Gary White, III. Plaintiff's request for denial founded on, but not limited to, the following:

I.

The United States Supreme Court has consistently held that they, "[D]o not impose on persons unlearned in the law, the same high standards of the legal art that they might place on the members of the legal profession." Pollard v. United States, 352 U.S. 354, 363 (1957). Pro se litigants are held, "[T]o less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 523 (1972). "As a pro se litigant, the Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007). The pro se litigant is not held to the

same high standard as a member of the Bar: but he must, never the less, meet certain standards—including any good faith attempt to comply with the Rules. 3 S.C. Digest 2b 160 (2006).

II.

When Plaintiff was charged with crimes that he did not commit, his seventy year old mother—who retired after working for the State of South Carolina for thirty years—withdraw all the funds in her retirement fund to retain the Defendants (See page 5—Exhibit 34): to prove her son's innocence. Hence, the Defendant's knew that Plaintiff had no money: and that his mother—whom lost her husband and sole provider to COPD last year—was struggling as well; only recently, the money was finally raised to procure an expert's affidavit.

To strike the affidavit of Attorney White would be analogues to rewarding the Defendant's success in stripping the Plaintiff and his mother of the financial means to seek and file a timely affidavit, and to likely bar Plaintiff's right of access to the court.

Because Plaintiff is an *unlearned pro se litigant*, his failure to ask this Court for leave to amend the pleadings with Attorney White's expert affidavit was not an act of defiance, but rather the consequence of Plaintiff's lack of experience with errorless civil procedure. In light of Plaintiff's pecuniary this advantage, his standing as a pro se litigant, and his good faith efforts to comply with the Rule, Plaintiff beseeches this Court to affirm his access to the court, waive his failure to pursue the requisite leave to amend, and to embrace the expert affidavit of Attorney White in the pleadings.

III.

Attorney White was retained in good faith to review Plaintiff's presentation of the facts in this matter; the trial transcript and supporting court documents were also provided. Following his review, Attorney White provided Plaintiff with his expert affidavit—which was filed with the Clerk on February 16, 2011. On March 7, 2011: Attorney White was definitely suspended from the practice of law for ninety days; therefore, he was a standing member of the Bar—licensed to practice law—when he documented his observation based on years of experience in criminal practice.

When distinguishing In the Matter of White, Op. No. 26939 (S.C. Sup. Ct. filed March 7, 2011), Attorney White's methods may strike one as bizarre or unreasonable: but his expressed belief and the passion that drive him do not equate to an inability to determine if the Defendant's performance violated the applicable standard of care; and that their actions adversely affected Plaintiff's defense and the outcome of his trial. Moreover the *Order* (See Defendant's Motion to **(R.pp. 61-63)** Strike—Exhibit A) reveals that another lawyer has been appointed to assume responsibility of Attorney White's obligations to his clients; tacitly confirming that the integrity of his law practice remain sound. The Defendant has suggested that Attorney White's authority to practice law prior to being suspended was negated by that suspension: if this were to be acknowledged, the entire legal profession would be destabilized; hiring a lawyer would be like playing the lottery. Attorney White has been a member of the Bar for nearly thirty-five years, and has experience in both criminal and civil procedure: to insist that these credentials do not qualify him to conduct a review of this matter, and that these facts do not qualify him to be an expert witness also undermines the legal profession.

IV.

WHEREFORE, Plaintiff prays that this Court will deny the Defendant's Motion to Strike Affidavit of William Gary White, III; amend the pleadings with the expert affidavit of William Gary White, III; and for such other relief this Court deems just and proper.

Respectfully submitted,



Clark D. Thomas #187845
BRCH / Murray A-267
4460 Broad River Road
Columbia, SC 29210

March 28, 2011
Columbia, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Clark D. Thomas,
Plaintiff,

vs.

Bolus & Bolus, Attorneys,
Keith Bolus, officially,
Michael T. Bolus, Officially
and individually,
Defendants.

) IN THE FAMILY COURT
) IN THE NINTH JUDICIAL DISTRICT
) CASE NO.: 2010-CP-10-4820
)

**MEMORANDUM OPPOSING
MOTION TO DISMISS
MICHAEL BOLUS, KEITH BOLUS,
AND BOLUS & BOLUS**

2011 APR -1 AM 11:01
JULIA J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Clark D. Thomas respectfully submits this Memorandum Opposing Motion to Dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus.

INTRODUCTION

This is a legal malpractice action arising from a violation of the applicable standard of care that was carried out by the Defendants Michael Bolus, Keith Bolus, and Bolus & Bolus; that adversely affected Plaintiff's defense and the outcome of his trial. Plaintiff filed this lawsuit on June 15, 2010: relying on South Carolina Code § 15-36-100 (C) (2), in lieu of an expert affidavit. On the date of February 17, 2010: an expert affidavit confirming multiple causes of action was served on the Defendants and filed with the Clerk of Court. On April 1, 2011: an *Amended Complaint* was also filed that embraced the aforementioned affidavit; and a second expert affidavit as well.

The four elements necessary to prevail in a legal malpractice claim are: 1) the existence of an attorney-client relationship; 2) breach of duty by the attorney; 3) damage to the client; and 4) proximate causation of [the] client's damage by the breach. Smith v. Hastie, 626 S.E.2d 13,

17 (S.C. App. 2005) (quoting Holy Loch Distributors v. Hitchcock, 531 S.E.2d 282, 285 (S.C. 2000)). Plaintiff has explicitly met these requisites.

STANDARD

Pro Se Litigation

The United States Supreme Court has consistently held that they, “[D]o not impose on persons unlearned in the law, the same high standards of the legal art that they might place on the members of the legal profession.” Pollard v. United States, 352 U.S. 354, 363 (1957). Pro se litigants are held, “[T]o less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 523 (1972). “As a pro se litigant, the Plaintiff’s pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007). The pro se litigant is not held to the same high standard as a member of the Bar: but he must, never the less, meet certain standards—including any good faith attempt to comply with the Rules. 3 S.C. Digest 2b 160 (2006).

Cause of Action

The Defendant’s contention that Plaintiff has failed to state facts that constitute a cause of action is erroneous in light of Plaintiff’s expert affidavits: which corroborate Plaintiff’s proclaimed causes of action under South Carolina Code § 15-36-100 (C) (2). There remains no doubt that the facts and inferences entitle Plaintiff to relief on every theory of this case: however, as there are so many well-grounded causes of action, there is the likelihood of varying interpretations of the facts. If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. Shearer v. Deshon, 126 S.E.2d 514, 517 (S.C. 1962).

In distinguishing Falk v. Sadler, 533 S.E.2d 350, 353 (S.C. App. 2000) (quoting, Russell v. City of Columbia, 406 S.E.2d 338 (S.C. 1991)), “[a] judgment on the pleadings against the

Plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff would entitle him to judgment. ... Moreover, a complaint is sufficient if it states any cause of action, or it appears that the plaintiff is entitled to any relief whatsoever.” *Falk, id.* In the instant matter—as revealed by the expert affidavits—there are many causes of action in the *Complaint* to choose from that meet this criterion.

The courts have held that, “[w]here the pleadings allege and the evidence shows a conscious and willful violation, invasion, or infringement of a legal right, the state will presume damages sufficient to sustain an action.” Cook v. Atlantic Coast Time R. Co., 190 S.E. 923, 924 (S.C. 1937); cf. Hinson v. A. T. Sistare Construction Co., 113 S.E.2d 341, 344 (S.C. 1960). “A defendant may be held liable for anything which appears to have been a natural and probable consequence of his negligence.” Hill v. York County Sheriff’s Dept., 437 S.E.2d 179, 182 (S.C. App. 1993).

Breach of Fiduciary Duty

The Court in Ellis v. Davidson, 595 S.E.2d 817, 823 (S.C. App. 2004), confirmed that, “[o]ur courts have recognized the attorney-client relationship, by its very nature, a fiduciary one.” It was confirmed in DePass v. Piedmont Interstate Fair Ass’n, 59 S.E.2d 495 (S.C. 1950), stating that a fiduciary relationship always exists between attorney and client. Hatfield v. Van Epps, 594 S.E.2d 526, 530 (S.C. App. 2004) (quoting Stallings v. Ratliff, 536 S.E.2d 414, 417 (S.C. App. 1987)), verifying that, “[t]he issue of breach of duty does not turn on a ritual incantation of certain magic words by an expert witness. Breach of duty is a fact question to be decided by the jury on the evidence presented in each case.” In the instant matter, the Defendants were paid in full: then breached their fiduciary duty. Under no circumstances will counsel be permitted to profit from breach of his duty as fiduciary. Premium Inv. Corp. v. Green, 324 S.E.2d 72 (S.C. App. 1984).

Breach of Contract

Black's Law Dictionary 213 (9th Edition 2009), defines a *Breach of Contract* as a, "[v]iolation of a contractual obligation by failing to perform one's own promise... ." The Restatement (Second) of Contracts, § 236 Comment a (1979), expresses that, "[a] breach may be one by non-conformance, or by repudiation, or by both. Every breach gives rise to a claim for damages, and may give rise to other remedies. ..."

Within Rule 402 (k), SCACR, the Lawyer's Oath embraces a pledge to a lawyer's clients of faithfulness, competence, diligence, good judgment and prompt communication: that they will defend the Constitution of this State, and the United States; to respect and preserve inviolate the confidences of their clients; to assist the defenseless or oppressed by ensuring that justice is available to all citizens, and will not delay any person's cause for profit or malice. In the instant case, the Defendants entered into a contract to provide legal services to Plaintiff: therefore, these Defendants breeched their contract with Plaintiff by failing to provide these assurances to him as well.

Damage Mitigation

The Defendants have set forth that Plaintiff failed to mitigate his damages as required by law. An attempt was made to compensate the Defendants for services rendered, and to release them from their contractual obligations (see page 15—Exhibit 33): however, the Defendants refused to return any portion of the retainer (see pages 16-18—Exhibit 34); forcing Plaintiff to remain under contract—this was Plaintiff's distinct offer to mitigate his damages.

Waiver

A *Waiver*, as revealed by *Blacks at 1717* is, "[t]he voluntary relinquishment or abandonment—expressed or implied—of a legal right or advantage; forfeiture. The party alleged to have waived a right must have had knowledge of the existing right and the intention of

forgoing it.” At no time did Plaintiff participate in a decision within this criterion. “A waiver is often asserted as the justification for a decision when it is not appropriate to the circumstances.”

Robert E. Keeton & Alan I. Widiss, Insurance Law § 6.8 at 719 (1998).

Estoppel

Black's at 629, clarifies that *Estoppel* is, “[a]n affirmative defense—[which the Defendants must prove]—alleging good faith reliance on a misleading representation and an injury or detrimental change in position resulting from that reliance.” Plaintiff has diligently maintained his innocence, and he will never proclaim otherwise. Therefore, *estoppel* does not apply.

Laches

Black's at 953 defines *Laches* as, “[u]nreasonable delay in pursuing a right or claim—almost always an equitable one—in a way that prejudices the party against whom the relief is sought.” Plaintiff initiated this action within two years after his trial. In light of this timely response, *laches* are not applicable in this matter.

Collateral Estoppel

“To assert collateral estoppel successfully, the party seeking issue preclusion ... must show the issue was actually litigated and directly determined in the prior action, and that the matter or fact directly in issue was necessary to support the first judgment.” Irby v. Richardson, 298 S.E.2d 452, 453 (S.C. 1982). See also Beall v. Doe, 315 S.E.2d 186, 191 (S.C. App. 1984). In the instant case, none of Plaintiff's claims have been heard in any forum prior to this lawsuit: therefore, *collateral estoppel* does not apply.

Res Judicata

Res Judicata has been determined by *Black's at 1425* to be, “[a]n affirmative defense barring the same parties from litigating a second lawsuit on the same claim arising from the same

transaction or series of transactions and that could have been—but was not—raised in the first suit.” Because this is the first lawsuit in the instant matter, *Res Judicata* obviously does not apply.

Unclean Hands

The Court in E.E.O.C. v. Recruit U.S.A., Inc., 939 F.2d 746, 753 (9th Cir. 1991) held that, “[T]he clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest. In such cases, equity’s lodestar that justice be done prevails. In the instant matter, the Defendants have engaged in outrageous conduct that, in the *public’s interest*, must be precluded from ever happening again, and to ensure that *justice be done*.

The United States Supreme Court in Johnson v. Yellow Cab Transit Co., 321 U.S. 383, 387 (1944) (quoting Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 245-46 (1933)) instructed that:

““the clean hands doctrine does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the Plaintiff himself is possibly guilty of transgressing the law in the transgressions involved. The maxim that he who comes into equity must come with clean hands is not applied by way of punishment for an unclean litigant but “upon considerations that make for the advancement of right and justice. ...” It is not a rigid formula which “trammels the free and just exercise of discretion;””

In accordance with these determinations and Plaintiff’s actual innocence, the *unclean hands doctrine* does not apply.

ARGUMENT

I.

Expert Affidavit

Plaintiff is unlearned in the law, and financially constrained to litigate this matter by himself: Plaintiff's pecuniary hardship also precluded his capability of acquiring the affidavit of an expert within the two year statute of limitations: therefore, Plaintiff relied upon South Carolina Code § 15-36-100 (C) (2) to ensure that his constitutional right of access to the courts was not barred. "[T]he legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. One of the primary rules in a construction of a statute is that the words used therein should be taken in the ordinary and popular significance. "Gambrell v. Travelers Ins. Companies, 310 S.E.2d 814, 816 (S.C. 1983). It appears that the legislative intent of § 15-36-100 (C) (2), was to enable all United States citizens to enjoy their right of access to the courts as guaranteed by the Fourteenth Amendment to the United States Constitution—regardless of their financial status.

When Plaintiff was charged with crimes that he did not commit, his seventy year old mother—whom retired after working for the State of South Carolina for thirty years—withdraw all the money in her retirement fund to retain the Defendants (see page 16—Exhibit 34; page 19—Exhibit 9): to prove her son's innocence. Hence, the Defendant's knew that Plaintiff had no money: and that his mother—whom lost her husband and sole provider to COPD last year—was struggling as well; only recently, the money was finally raised to procure an expert's affidavit (see pages 22-23—Exhibit 149). This affidavit made it clear that Plaintiff had correctly identified many causes of action—because they were within the ambit of common knowledge: the second expert affidavit also explicitly details a substantial number of causes of action (see pages 24-29—Exhibit 150). Of course, it should not require the opinion of an expert to

determine if the Defendants knowingly taking on Plaintiff's ex-wife as a client is a cause of action (see pages 30-31—Exhibit 88-A); with particularity when Plaintiff's ex-wife had an active bench warrant for his arrest when her retainer was accepted (see page 33, lines 7-9—Exhibit 107). Defendant Michael Bolus even acknowledged this conflict of interest (see page 35, line 10—Exhibit 58). It is ludicrous to even suggest that an attorney representing both sides of the adversarial fence could escape the *common knowledge* notice of impropriety.

Conflict of Interest

A *Conflict of Interest* is defined by *Black's at 341* as a, “[r]eal or seeming incompatibility between the interests of two of a lawyer’s clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client, or if the clients do not consent.” In the instant matter, the Defendants elected to abandon Plaintiff after he was arrested on a bench warrant initiated by his ex-wife—Kerri Davis—whom the Defendants had taken on as a client after entering into a contract with Plaintiff. Rules of Professional Conduct, Rule 407, SCACR: Rule 1.7 (Conflict of Interest: Current Clients—Comment [18], paragraph (b)), requires the lawyer to obtain the informed consent of the client, confirmed in writing. The Defendants did not obtain Plaintiff’s consent verbally or in writing; nor did they even inform him that Kerri Davis had retained their services.

In the matter of Walter Bilbro, 550 S.E.2d 318 (S.C. 2001), [Bilbro] undertook representation of a client in a workers’ compensation matter when he had previously, and currently, representing the client’s employer. [Bilbro] did not fully disclose the conflict to the client, nor did he obtain the client’s consent to continue representation despite the conflict. The Court determined that by his conduct, [Bilbro had] violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (failing to act with reasonable diligence in representing a client); Rule 1.4 (failing to properly communicate with a client); and Rule 1.7 (representing a

client when representation is directly adverse to another client). By violating the Rules of Professional Conduct, [Bilbro had] also violated Rule 7 (a) (1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

In distinguishing Cianbro Corp. v. Jeffcoat and Martin, 804 F. Supp. 784, 791 (D.S.C. 1992) (quoting, Pederson v. Gould, 341 S.E.2d 633, 634 (S.C. 1986)), the Court expressed that, “[e]xpert testimony concerning the standard of care is not required ... in professional malpractice cases where the negligence is so obvious as to be ‘within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.’” *Cianbro, id* (quoting Mali v. Odom, 367 S.E.2d 166, 168 (S.C. App. 1988)), affirming that, “[t]his *common knowledge* exception applies in legal malpractice cases.”

For the purposes of § 15-36-100 (C) (2), this clear conflict of interest easily meets the standard to preclude the requirement of an expert affidavit before this action can be heard by a jury. Moreover, the many flagrant acts of legal malpractice revealed within both of the expert’s affidavits bring to light the Defendant’s deliberate indifference to Plaintiff’s rights and their oath to maintain the dignity of the legal system: which is exacerbated by their audacity in denying that they have represented themselves to the public as a law firm—when their website address is *Boluslawfirm.com*—and blatantly lying to the court.

To dismiss this action would be to confirm the Defendant’s belief that they can swindle Plaintiff’s widowed, mother out of her life savings and betray Plaintiff with impunity: also, to reward the Defendant’s success in stripping Plaintiff and his mother of the financial means to seek and file a timely expert affidavit—by dismissing this action—is to, ultimately, ensure that violations by these Defendant’s that are shocking to the universal sense of justice will continue;

and to encourage other attorneys to engage in likewise behavior against those who do not have enough money to guarantee that their rights are protected.

II.

Actual Innocence

When Plaintiff was wrongfully accused of kidnapping, criminal domestic violence of a high and aggravated nature (CDVHAN), and sexual battery on spouse—later upgraded to criminal sexual conduct 1st—he proclaimed his innocence and demanded a trial by jury: however, because of the Defendants outrageous conduct, Plaintiff was precluded from establishing his actual innocence; wherein, he was erroneously convicted and sentenced to an aggregate term of twenty years in prison. The Court in Schlup v. Delo, 513 U.S. 298, 313-317 (1994), has determined that in the light of these kind of circumstances, Plaintiff's assertion of *actual innocence* is a cogent claim. Immediately following his wrongful conviction, Plaintiff instructed the Defendants to file a direct appeal: to date, Plaintiff has unremittingly sought to establish his innocence. Plaintiff's convictions have not been affirmed, and his claim to *actual innocence* remains a standing declaration.

Outrageous Conduct

In the instant matter, the Defendants: 1) intentionally and recklessly inflicted severe emotional distress, and they were certain that such distress would result from their conduct; 2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, 3) the actions of the Defendants caused the Plaintiff's emotional distress; and 4) the emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it. The four

essential elements of *outrageous conduct*. Upchurch v. New York Times Co., 431 S.E.2d 558, 561 (S.C. 1993) (quoting, Restatement (Second) of Torts § 46 (1965)).

The Innocence Element

In distinguishing Brown v. Theos, 550 S.E.2d 304, 306 (S.C. 2001) (quoting, 3 Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice § 25.3, at 235-236), it was confirmed that:

““[f]irst, the court may consider whether the client who has received a criminal conviction must first obtain post-conviction relief before bringing the malpractice action. Second, the court may consider whether such client needs to prove innocence of the crime as an element to the cause of action. If the doctrine of *collateral estoppel* applies, a judgment of conviction precludes establishing innocence. Most courts impose both requirements.””

The language of this determination evinces that the relevance and necessity of the authenticated innocence element in pleading and proving Legal Malpractice is within the discretion of the court.

The extraordinarily, extensive volume of contraventions—perpetrated by the Defendant’s against Plaintiff—leave little doubt, if any, that had Plaintiff been properly represented by competent counsel, he would not have been found guilty. In light of this observation, this Court should allow the jury to hear this case. Furthermore, the conflict of interest in this matter occurred in the course of civil litigation in a Family Court action. “The traditional malpractice action is one involving an attorney’s representation of a client in a civil matter. In this type of action, the client’s innocence is not considered an element of the cause of action.” *Legal Malpractice* at 224, *id.*

III.

The Bolus Law Firm

The Defendants: Michael Bolus, Keith Bolus, and Bolus & Bolus—for years—have publicly proclaimed that they are a law firm—as evidenced in the photographic exhibits within Plaintiff's *Reply to Motion to Dismiss*: conclusive proof of this fact is provided by their website address of *Boluslawfirm.com*. Defendant Michael Bolus has pointed out that Exhibit 9 (see **(R, pp. 156-158)** pages 19-21) is a contract exclusively between himself and Plaintiff. The Defendants Keith Bolus, Michael Bolus, and Bolus & Bolus are collectively one in the same: by this confirmed affiliation, Keith Bolus and Bolus & Bolus are equally liable for the actions of their colleague, Defendant Michael Bolus.

George Keith Nichols

The first time that Plaintiff retained the *Bolus Law Firm* was to defend him against misdemeanors involving his business checking account: Plaintiff had assumed the alias of George Keith Nichols to avoid being arrested, but he was eventually taken into custody. Prior to pleading guilty to these charges in August of 1992: Plaintiff informed Defendant Keith Bolus of his wish to resume his real name; however, this Defendant told Plaintiff that the Judge may react unfavorably if he was to be enlightened to this conflict in names, and he advised Plaintiff to remain under the alias of George Nichols. Plaintiff followed his attorney's advice and was sent to prison as George Keith Nichols.

Plaintiff made many attempts to take back his true identity while incarcerated, but the South Carolina Department of Corrections (SCDC) refused to acknowledge his birth name: when he was released four months later in December of 1992: Plaintiff never misrepresented himself again. When Plaintiff was wrongfully imprisoned for the erroneous charges involved in the instant matter, SCDC forced Plaintiff to resume the name George K. Nichols. Defendant

Michael Bolus has told this Court and Plaintiff's appellate counsel that Plaintiff had used the alias of George Nichols throughout his life (see page 39—Exhibit 148); there are countless witnesses available to confirm that this is a blatant lie.

The Agency Relationship

The Supreme Court has consistently held that, “[a]ll ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (S.C. 1997). The courts have also determined that, “[t]he terms of a contractual agreement are not conclusive in determining the association between two parties where there is evidence outside the contract establishing an agency relationship. “Beasley v. Kerr-McGee Chemical Corp., 257 S.E.2d 726, 727 (S.C. 1979). Moreover, if there are any facts tending to prove an agency relationship, the question is one for the jury. Reid v. Kelly, 262 S.E.2d 24 (S.C. 1980).

IV.

Intrinsic Fraud

In distinguishing Stiles v. Onarato, 457 S.E.2d 601, 602 (S.C. 1995) (quoting L & H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372 (Minn. 1989)), “[an] attorney who makes an affirmative misrepresentation to an adversary, or conspires with his or her client may be held liable for fraud.” In the instant case, because the Defendants have categorically denied that they are practicing law as a law firm in their pleadings—which the evidence proves that they are—this is clearly an affirmative misrepresentation. Moreover, this act was obviously contrived with the ambition to gain the dismissal of equally culpable defendants Keith Bolus and Bolus & Bolus. The South Carolina Supreme Court has determined that intrinsic fraud, “[I]s fraud that

misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” Hilton Head Center v. Public Service Commission, 362 S.E.2d 176, 177 (S.C. 1987).

Conspiracy

The Court in *Stiles, id* (quoting Fraidin v. Weitzman, 611 A.2d 1046 (1992), “[an] attorney [is] liable for conspiracy if actively involved in wrongful conduct.”) In the instant matter, both of the Defendants—Michael Bolus and Keith Bolus—have made affirmative pleadings that their law firm does not exist. The Court has defined *conspiracy* as the conspiring together to do an unlawful act to the detriment of another, or the doing a lawful act, in an unlawful way, to the detriment of another. Charles v. Texas, 5 S.E.2d 464 (S.C. 1939). The language of *L & H Airco, supra*, appears to suggest that Carlock, Copeland, & Stair—counsel for Keith Bolus—are culpable as well: by actively participating in this conspiratorial and fraudulent behavior.

CONCLUSION

In light of these facts and binding authority, Plaintiff Clark D. Thomas respectfully requests that this Court deny the Defendant’s motion to dismiss all claims with prejudice; or for such other relief as this Court deems just and proper.

Respectfully submitted,


Clark D. Thomas, #187845
BRCI Murray A-267
4460 Broad River Road
Columbia, SC 29210

, 2011
Columbia, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

v.

BOLUS & BOLUS, ATTORNEYS
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants,

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICAL CIRCUIT
Case No.: 1010-CP-10-4820

**NOTICE OF MOTION AND
MOTION FOR LEAVE TO AMEND
AND SUPPLEMENT THE PLEADINGS
AND TO FILE AN
AMENDED COMPLAINT**

FILED
2011 APR -1 AM 11:01
JUDGE J. ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, Pro se, in accordance with Rule 15 (a), (b), (c), (d), SCRCF, now moves this Honorable Court for leave to amend and supplement the pleadings, and to file an amended complaint. Plaintiff contends that it is within this Court's power to accept the amended and supplemented pleadings within the *Amended Complaint*; and that it is in the best interest of justice to allow Plaintiff to file the *Amended Complaint*. Plaintiff's request is founded on, but not limited to the following:

I.

The United States Supreme Court has consistently held that they, "[D]o not impose on persons unlearned in the law, the same high standards of the legal art that they might place on the members of the legal profession." Pollard v. United States, 352 U.S. 354, 363 (1957). Pro se litigants are held, "[T]o less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 523 (1972). "As a pro se litigant, the Plaintiff's pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007). The pro se litigant is not held to the

same high standard as a member of the Bar: but he must, never the less, meet certain standards—including any good faith attempt to comply with the Rules. 3 C. Digest 2b 160 (2006).

II.

Because of the two year statute of limitations in filing an action for legal malpractice, Plaintiff was constrained to hastily compose a complaint. Plaintiff's lack of wisdom in the practice of civil procedure—compounded with the prescribed time stricture—resulted in the production of a flawed *Complaint*. In distinguishing, United Educational Distributors, LLC v. Educational Testing Service, 564 S.E.2d 324, 326-327 (S.C. App. 2002), the court sanctioned *members of the legal profession* an opportunity to file an amended complaint some ninety days after filing the original complaint: more than nine months after filing the original complaint, *members of the Bar* were, again, given consent to file a second, amended complaint.

The amended complaints in *United, id*, were admitted in order that seasoned lawyers may conform to standards. The problems in that case are innately the same, and the necessity to *get it right* remains analogues to the instant matter. In light of the vast causes of action, the nature of these contraventions, and that the proposed amendments and supplements within the *Amended Complaint* do not prejudice the Defendants: justice so requires that leave be freely given.

III.

Plaintiff's amended and supplemented facts and exhibits therein the *Amended Complaint*, among other conformities, reveal two very important facts: (1) while expert testimony is usually required in a legal malpractice action, the Defendant's conduct, acts, and omissions in this case are such that any rational person can see that no reasonable standard of care was provided; and

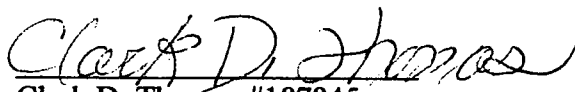
(2) notwithstanding the common knowledge doctrine of S.C. Code § 15-36-100 (C) (2), the affidavits—provided by Plaintiff—from an attorney and an esteemed instructor for the South Carolina Bar and Supreme Court’s ongoing Legal Ethics and Practice Program have clearly confirmed that the Defendants did engage in conduct that is shocking to the universal sense of justice.

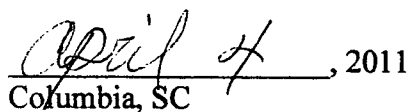
IV.

S.C. Code § 15-36-100 (E) states that, “[t]he trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires.” While Plaintiff does not concede that this action’s continuance should be contingent on the granting of this motion, Plaintiff does believe that its acceptance is in the best interest of justice.

WHEREFORE, Plaintiff prays that this Court will grant the relief requested by permitting him to amend and supplement the pleadings; to file the *Amended Complaint*; and for such other relief as this Court deems just and proper.

Respectfully submitted,


Clark D. Thomas #187845
BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210


Columbia, SC, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL DISTRICT
CASE No.: 1010-CP-10-4820

Clark D. Thomas,
Plaintiff,

vs.

Bolus & Bolus, Attorneys,
Keith Bolus, officially,
Michael T. Bolus,
Officially and individually.
Defendants.

**AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

The Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

1. That the Plaintiff Clark D. Thomas is a citizen and resident of the County of Richland, South Carolina.
2. Plaintiff Thomas is a licensed electrical contractor and former owner and operator of *Service, Inc.*
3. That the Defendant Michael T. Bolus (hereinafter also referred to as *Michael*) is a resident of Charleston County, South Carolina.
4. That the Defendant Michael Bolus held himself out to the community at large as a lawyer licensed to practice law in South Carolina: under the rules and orders of the South Carolina Supreme Court; and the South Carolina Bar Association's guidelines for ethics and standards applicable to the practice of law.
5. That the Defendant Keith Bolus is a resident of Charleston County, South Carolina.

6. That the Defendant Keith Bolus held himself out to the community at large as a lawyer licensed to practice law in South Carolina: under the rules and orders of the South Carolina Supreme Court; and the South Carolina Bar Association's guidelines for ethics and standards applicable to the practice of law.
7. That the Defendant Michael Bolus, acting in his official capacity as an attorney with Defendant Keith Bolus and the law firm of Bolus & Bolus, herein law firm, did, on or about June 20, 2006: enter into a legal representation agreement wherein and whereby the Plaintiff retained the services of the Defendants. A copy of the *Legal Representation Agreement* is attached hereto, and incorporated herein by reference and marked *Exhibit 9* (see pages 9-11).
(R. pp. 156-158)
8. The Defendants represented and warranted to the Plaintiff that they were competent to represent Plaintiff in the Court of General Sessions, and that the Plaintiff could trust them to manage his legal affairs fairly and diligently.
9. The Plaintiff, relying upon the express and implied representations of the Defendants, hired, retained and employed the Defendants on June 20, 2006; and entrusted his legal affairs to them solely.
10. There was at all times after June 20, 2006: an attorney/client relationship between the Defendants and Plaintiff, a fiduciary relationship of trust and confidence; a relationship in which the Defendants were obligated to use their best judgment, and apply their best skills to serve the Plaintiff's interest; a relationship which obligates the Defendants to make full disclosure of all matters related to the Plaintiff's affairs; and to diligently, reasonably and efficiently apply their attention to the Plaintiff's legal affairs.

11. The acts or omissions of the Defendants are imputed to the law firm: because the Defendants were the agents, servants, partners, associates or employees of the law firm; and were at all times acting within the scope of their employment.
12. The acts or omissions of the Defendants are imputed to the law firm by operation of law: because the law firm had actual and constructive knowledge of the Defendants' acts or omissions and, thereby, acknowledged, approved, tolerated and acquiesced in the Defendant Michael's misconduct.
13. It was the duty of the law firm and the Defendants to disclose fully, in writing, any potential conflict of interest by the law firm and the Defendants representing the Plaintiff in legal matters that were created when the Defendants and the law firm represented the Plaintiff's ex-spouse.
14. It was the duty of the law firm and the Defendants to inform, explain fully and justify all legal services charged to the Plaintiff.
15. It was the duty of the law firm to audit the Defendants' charges for legal fees to Plaintiff: as it was the law firm's duty to manage, supervise and control all of its employees to prevent creating excessive, unjustified or unreasonable legal fees.
16. Plaintiff is innocent of the charges of kidnapping and criminal domestic violence of a high and aggravated nature (CDVHAN): he is currently in direct appeal of his conviction.
17. The contemporaneous, expert affidavit of attorney Wm. Gary White, III, confirms specific negligent acts and omissions that were perpetrated by the Defendants: violating the applicable standard of care, and adversely affecting Plaintiff's defense and the outcome of his trial. A copy of the *expert affidavit* is attached

hereto, and incorporated herein by reference and marked as Exhibit 149 (see pages 12-13). (R. pp. 181-182)

18. The contemporaneous, expert affidavit of Attorney Michael Virzi confirms specific negligent acts and omissions that were perpetrated by the Defendants: violating the applicable standard of care, and adversely affecting Plaintiff's defense and the outcome of his trial. A copy of the *expert affidavit* is attached hereto, and incorporated herein by reference and marked as *Exhibit 150* (see pages 14-19). (R. pp. 183-188)
19. This is an action of outrage in that the Defendants did intentionally and recklessly inflict severe emotional distress, and they were certain that such distress would result from their conduct.
20. The Defendants did engage in conduct that was so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community.
21. The actions of Defendants caused the Plaintiff's emotional distress.
22. The emotional distress suffered by the Plaintiff is so severe that no reasonable person could be expected to endure it.

FOR A FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY OWED TO PLAINTIFF

23. Each and every allegation in paragraphs 1-22 above is to be considered as if restated verbatim herein.
24. The Defendants owed a fiduciary duty to the Plaintiff due to the attorney/client relationship established by the *Legal Representation Agreement* affixed as *Exhibit*

(R.pp. 156-158)

9 (see pages 9-11): with this relationship established, the Plaintiff relied on the Defendants for their legal expertise and representation including, but not limited to, reaching a disposition of pending criminal charges against the Plaintiff.

25. The Plaintiff specifically relied on Defendants to protect his rights and guide him through the process of a criminal trial to reach the optimum outcome.
26. The Plaintiff specifically relied on the Defendants' knowledge and expertise regarding trial strategy.
27. The Plaintiff specifically relied on the Defendants' knowledge and expertise regarding all decisions during the trial process.
28. The Defendants and the law firm, by combination of their actions or ratification of each other's actions, expressly or impliedly breached their fiduciary duty to the plaintiff in the following ways, including, but not limited to:
 - (a) By failing to disclose or consult with the Plaintiff and obtain his consent regarding the Defendants' conflict of interest.
 - (b) By failing to consult with the Plaintiff regarding a plea to a lesser included offense.
29. That as a direct and proximate consequence of said breaches by the Defendants, the Plaintiff has suffered damages as follows, including, but not limited to:
 - (a) Loss of income from his company operating as a licensed electrical contractor for the duration of his incarceration: valued at \$2,550,000.00;
 - (b) Plaintiff has suffered by sustained and extensive legal fees, pain, worry, anxiety, physical and emotional upset, and strain: Plaintiff reasonably

believes that these injuries and damages will continue for many years into the future;

- (c) Plaintiff prays this Honorable Court for a judgment in the amount of \$2,550,000.00 for lost wages; for an appropriate award of punitive damages; pre-judgment and post-judgment interest; and for such further relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT

30. Each and every allegation in paragraphs 1-29 above is to be considered as if restated verbatim herein.
31. The Plaintiff and Defendants, as demonstrated by *Exhibit 9*, entered into an agreement for legal representation on or about June 20, 2006. (R. pp. 156-158)
32. Between 2007 and 2008: the Plaintiff and Plaintiff's ex-wife had litigation pending in family court; a bench warrant had been issued for Plaintiff's arrest.
33. In 2008: Plaintiff's ex-wife was arrested for driving under the influence; after which the Ms. Davis retained the Defendants as counsel.
34. The Defendants, knowingly, and with full awareness, entered into a representation agreement with Ms. Davis, rendering them unable to fulfill their duties to the Plaintiff, and thereby breaching the *Legal Representation Agreement* which existed between the Plaintiff and the Defendant (see page 21, lines 7-8—Exhibit 107). (R. p. 160)
35. As a direct and proximate consequence of the Defendants' breach of contract, the Plaintiff has been damaged and injured by incarceration, sustained and extensive

legal fees, pain, worry, anxiety, physical and emotional upset, and strain: which Plaintiff reasonably believes that his injuries and damages will continue many years into the future. Plaintiff prays this Honorable Court for an appropriate award of punitive damages against the Defendants.

FOR A THIRD CAUSE OF ACTION
LEGAL MALPRACTICE

36. Each and every allegation in paragraphs 1-35 above is to be considered as if restated verbatim herein.
37. On or about July 10, 2008: the Plaintiff discovered that the law firm and the Defendants deviated from the standard of care expected from all attorneys and were otherwise careless, negligent, reckless, willful or wanton in one or more of the following particulars, to wit, the Defendants:
 - (a) failed to motion the court to dismiss all charges after a motion for a speedy trial had been granted, and subsequently expired;
 - (b) failed to subpoena numerous witnesses whose testimony would have been favorable to the Plaintiff;
 - (c) failed to challenge testimony presented by the prosecution which clearly contradicted previous testimony and written statements by the same witness;
 - (d) failed to object when prosecution repeatedly fabricated information concerning the Plaintiff's prior criminal history;
 - (e) failed to obtain medical information to corroborate or discount alleged physical injuries to the victim;

- (f) allowed the trial to proceed even though he had not received any *Brady* material;
- (g) allowed admission of images into evidence—without objection—that had not been provided to the defense with *Brady* materials;
- (h) failed to object to testimony concerning injuries which could not be corroborated;
- (i) failed to secure all the discovery materials—*Rule 5 Brady* materials—before trial.
- (j) failed to withdraw their representation after willfully agreeing to represent the Plaintiff's ex-wife while litigation between the Plaintiff and his ex-wife was still pending.

As a direct and proximate consequence of the Defendants deviation from the standard of care, the Plaintiff has been injured and damaged by incarceration, sustained and extensive legal fees, pain, worry, anxiety, physical and emotional upset, strain and the loss of income: Plaintiff reasonably believes that his injuries and damages will continue for many years into the future.

WHEREFORE, having fully set forth its complaint herein, the Plaintiff prays for judgment against the Defendant in the sum of \$2,550,000.00 for actual damages; an appropriate award for punitive damages; and for such other and further relief as this Court may deem just and proper.

April 1, 2011
Columbia, SC

Clark D. Thomas
Clark D. Thomas #187845
Acting pro-se
BRCI Murray A-267
4460 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

v.

BOLUS & BOLUS, ATTORNEYS
KEITH BOLUS, OFFICIALLY,
MICHAEL T. BOLUS, OFFICIALLY
AND INDIVIDUALLY,

Defendants,

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICAL CIRCUIT
Case No.: 1010-CP-10-4820

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
A JUDGMENT TO INCLUDE
SPECIFIC FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

FILED
APR 29 AM 11:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY

YOU WILL PLEASE TAKE NOTICE that Plaintiff Clark D. Thomas, Pro Se, in accordance with Rules 52 (a), 59 (e), SCRCP, now moves this Honorable Court to alter or amend the judgment to include specific findings of fact and conclusions of law. Plaintiff's request is founded on, but not limited to the following:

I.

During the motion hearing held on April 6, 2011: Plaintiff confirmed that this Honorable Court would review all of his pleadings prior to ruling on the Defendant's motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus; and motion to strike affidavit of William Gary White, III. The Plaintiff's pleadings in this case include the:

- 1) Complaint;
- 2) Reply to Defendant's Motion to Dismiss Michael Bolus;
- 3) Reply to Defendant's [Michael Bolus] Motion to Dismiss Bolus & Bolus;
- 4) Reply to Defendant's [Keith Bolus] Motion to Dismiss Bolus & Bolus;

- 5) Reply to Defendant's Motion to Dismiss Keith Bolus;
- 6) Return to Motion to Strike Affidavit of William Gary White, III; and
- 7) Memorandum Opposing Motion to Dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus.

The Court of Appeals has determined that when an issue raised within the answer to a complaint is not ruled upon in the trial court—and was not put forth for reconsideration by the trial court in a post-trial Motion to Modify or Amend Judgment [to include specific findings of fact and conclusions of law]—that this issue is not preserve for appellate review: and that, “post-trial motions to amend or modify are necessary to preserve issues that have been raised to the trial court but not ruled upon.” Sims v. Hall, 592 S.E.2d 315, 321 (S.C. App. 2003); Bailey v. Segars, 550 S.E.2d 910, 913 (S.C. App. 2001).

In light of the rulings in *Sims* and *Bailey*, Plaintiff is seeking specific findings of fact and conclusions of law concerning—in addition to the seven documents listed above—the issues raised, therein, the *Amended Complaint*, and Plaintiff's *Motion for Leave to Amend and Supplement the Pleadings and to File an Amended Complaint*: that Plaintiff asked this Court to take notice of prior to rendering a decision to dismiss the Defendants from this action, or striking the affidavit of William Gary White, III. It is Plaintiff's resolute ambition to preserve his meritorious issues in this matter for appellate review, and to secure Plaintiff's right to a trial by jury in suits of common law as guaranteed by the Seventh Amendment to the United States Constitution.

II.

Plaintiff directs this Court's attention to his *Return to Motion to Strike Affidavit of William Gary White, III*: because this *Return* was drafted—then voiced during a telephone call for transcribing—a deprivation of phonetic clarity developed; this handicap, resulting from Plaintiff's incarceration, effected a typo on page 2 of 7. Within the fourth line of the final paragraph, Plaintiff's articulacy was intended to be *Plaintiff's pecuniary disadvantage*; as opposed to *Plaintiff's pecuniary this advantage*.

III.

The Defendant's primary argument has been that Plaintiff has not stated a cause of action: because of Plaintiff's failure to proffer a timely, expert affidavit; and that Plaintiff's expressed causes of action cannot be embraced within the *ambit of common knowledge* exception to the expert affidavit requisite—offered in South Carolina Code § 15-36-100 (C) (2).

Plaintiff's second cause of action is a breach of contract grounded on *inter alia* a conflict of interest: deliberately created when Defendant Michael Bolus and the law firm of Bolus & Bolus agreed to represent Plaintiff's ex-wife, Kerri Davis in a criminal matter—after being retained as Plaintiff's defense counsel—during which time, Plaintiff and Ms. Davis were adversaries in a Family Court action. Plaintiff's *Memorandum Opposing Motion to Dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus* provides documentation in support of this conflict of interest: including a witnesses' affidavit stating that Defendant Michael Bolus has confirmed this conflict of interest—clearly negating the need of an expert affidavit.

The *Complaint* in this case has stated quite a few claims that support several causes of action—many of which fall within the *ambit of common knowledge*:

- 1) The Sixth Amendment to the United States Constitution guarantees the right to a speedy trial: Plaintiff's trial was delayed for two years after invoking this right. Defendant Michael Bolus and the law firm of Bolus & Bolus failed to assert this right with a motion for dismissal before the trial court;
- 2) The Sixth Amendment to the United States Constitution guarantees the right to compel the attendance of witnesses for the defense. In addition to police officers that Defendant Michael Bolus and the law firm of Bolus & Bolus refused to subpoena at Plaintiff's request, these Defendants rejected witnesses that came to trial who, also, could have provided material testimony that was favorable to the Plaintiff;
- 3) A detailed observation of the incident report and the alleged victim's statement in this matter reveals myriad contradictions: conjoined with the alleged victim's testimony, over forty-six lies came to light. Defendant Michael Bolus and the law firm of Bolus & Bolus failed to reveal these lies, or challenge the credibility of the alleged victim's testimony;
- 4) In the course of two court appearances, the prosecution presented false evidence that Plaintiff had at least nine felony convictions—when he actually had none—yet the Defendant Michael Bolus and the law firm of Bolus & Bolus failed to object to, or otherwise cure these spurious statements.

Each of the above claims would not require the affidavit of an expert to confirm: to emphasize this point, merely the fact that Defendant Michael Bolus and the law firm of Bolus & Bolus refused to present witnesses to corroborate Plaintiff's version of the facts—in order that the jury could make an informed decision—is a clear violation of Plaintiff's rights, and, also is obviously within the *ambit of common knowledge*.

The court has determined that, “[e]xpert testimony concerning the standard of care is not required ... in professional malpractice cases where the negligence is so obvious as to be ‘within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.’” Ciambro Corp. v. Jeffcoat and Martin, 804 F. Supp. 784, 791 (D.S.C. 1992) (quoting, Pederson v. Gould, 341 S.E.2d 633, 634 (S.C. 1986)).

IV.

The Defendants have argued that Plaintiff has failed to proclaim his innocence. Plaintiff’s *Memorandum Opposing Motion to Dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus*—pages 10-11—clearly establishes Plaintiff’s claim to innocence: in light of the Defendant’s many acts of negligence, and that, “[a]s a pro se litigant, the Plaintiff’s pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404 U.S. 519, 523 (1972); cf. Pollard v. United States, 352 U.S. 354, 363 (1957): it is in the interest of justice that because Plaintiff failed to have the skill that a lawyer enjoys and the correlated knowledge to assert his innocence in the *Complaint*, this error should be considered harmless.

Moreover, because the conflict of interest involves a civil matter, Plaintiff’s innocence is not considered a factor in this area of legal malpractice. “The traditional malpractice action is one involving an attorney’s representation of a client in a civil matter. In this type of action, the client’s innocence is not considered an element of the cause of action.” 3 Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice § 25.3 at 234. As there remains the instinct likelihood of varying interpretations of these facts, “[i]f more than one reasonable inference can be drawn

from the evidence, the case must be submitted to the jury.” Shearer v. Deshon, 126 S.E.2d 514, 517 (S.C. 1962).

V.

The Defendant’s argument against the admission of an expert affidavit from Attorney William Gary White, III is grounded on: Attorney White’s definite suspension and his alleged lack of experience as an expert; and Plaintiff’s failure to seek leave to amend the *Complaint*. In response, Plaintiff has argued *inter alia*—within his *Return to Motion to Strike Affidavit of William Gary White, III*—that Attorney White was not suspended when he provided an expert affidavit. Plaintiff has also secured another expert affidavit from Attorney Michael Virzi—whom is foremost, an irrefutable authority on legal malpractice—and filed a *Motion for Leave to Amend and Supplement the Pleadings and to File an Amended Complaint*. During the motion hearing, Plaintiff informed this Court that the *Amended Complaint* fully complied with all requisites.

Expert testimony is admissible when it satisfies the *most probably* rule. Baughman v. American Tel. and Tel. Co., 410 S.E.2d 537 (S.C. 1991); Armstrong v. Weiland, 225 S.E.2d 851 (S.C. 1976). In determining whether particular evidence meets this test it is not necessary that the expert actually use the words *most probably*. “*Baughman* quoting, Gamble v. Price, 347 S.E.2d 131 (S.C. App. 1986)). It is sufficient that the testimony is such, “as to judicially impress that the opinion ... represents his professional judgment as to the most likely one among the possible causes. ...” (*Baughman* quoting, Norland v. Washington General Hospital, 461 F.2d 694, 697 (8 Cir. 1972)). In the instant case, the expert affidavits of Attorneys White and Virzi meet these benchmarks.

VI.

The Defendants have maintained that they do not practice law as a law firm entitled Bolus & Bolus. Plaintiff's *Reply to Defendant's Motion to Bolus & Bolus* contains exhibits consisting of photographs revealing the various signs the Defendants have publicly displayed to identify the locations of the *Bolus Law Offices*: in addition to Internet exhibit where the Defendants expressed that *Over Fifty Years of Combined Experience* is available with *BOLUS & BOLUS*, and *We're here to help... that's a promise*. The Defendant's website address of *Boluslawfirm.com* is a clear public declaration that they are, indeed, a law firm.

If there are any facts tending to prove an agency relationship, the question is one for the jury. Reid v. Kelly, 262 S.E.2d 24 (S.C. 1980); Anderson v. West, 241 S.E.2d 551, 553 (S.C. 1978). In the course of the motion hearing in the instant matter, Plaintiff stated that Defendant Keith Bolus was not directly involved with the case that is the primary focus of this action: however, Plaintiff did disclose that his first encounter with the Bolus Law Firm, he retained Defendant Keith Bolus. Plaintiff contends that when he returned to the *Bolus Law Firm*, again, seeking representation in another unrelated matter, he met defendant Michael Bolus.

Plaintiff logically presumed that in light of the signs on the building designating the *Bolus Law Offices*, he could depend on defendant Keith Bolus to assist defendant Michael Bolus in the event that he is unable to fulfill his duty—which is the reason Plaintiff sought a law firm—each time he signed a contract with defendant Michael Bolus. “The terms of a contractual agreement are not conclusive in determining the association between two parties where there is evidence outside the contract establishing an agency relationship.” Beasley v. Kerr-McGee Chemical Corp., 257 S.E.2d 726, 727 (S.C. 1979).

VII.

The Supreme Court has determined that, “[T]he non-moving is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Midsouth Management Co., 673 S.E.2d 801, 803 (S.C. 2009). In the instant case, Plaintiff has clearly exceeded the measure in *Hancock*: however, Plaintiff subpoenaed material witnesses to testify at the motion hearing who would have conclusively confirmed the existence of the essential scintilla of evidence—at the Defendant’s request, this Court refused to hear the testimony of these witnesses.

VIII.

When Plaintiff was guided into this Court for the motion hearing, Defendant Michael Bolus immediately arose from his chair—where he had been sitting at a table with counsel for Defendant Keith Bolus—and engaged Plaintiff: Defendant Michael Bolus then asked the escorting bailiffs if he was supposed to be seated at the same table with Plaintiff; then attempted to shake Plaintiff’s hand.

Plaintiff is a victim of Defendant Michael Bolus and the law firm of Bolus & Bolus: because of their negligence, Plaintiff has been wrongfully convicted for crimes that he did not commit, and sentenced to twenty years in prison. During Plaintiff’s term of imprisonment—in addition to losing his freedom—Plaintiff has missed the birth of his granddaughter; was unable to attend his step-father’s funeral, and there is no way to determine how much longer it will be before Plaintiff’s conviction will be reversed.

If someone falls victim to a crime that destroys their life, the conventional course of action is to seek justice: they are accorded the assistance of the courts to punish those responsible for the offense. In some cases, victim's advocates ensure that the perpetrators are sternly dealt with, and offer emotional support. When those responsible for the suffering are taken to trial, the victimized are even influenced to express the depth of their suffering in an impact statement: to persuade the judge to impose a harsh sentence; and the victim never has to worry about being personally confronted by the accused while in the courtroom.

If a scenario were to ever develop into that depicted above—which bailiffs are obligated to preclude—it can be expected that the victim would become noticeably disturbed and repugnant if they were suddenly waylaid by their tormentor; which is precisely the emotional reaction Plaintiff felt when the Defendant Michael Bolus converged on him and attempted to shake his hand at the motion hearing.

Defendant Michael Bolus has been practicing law in the courthouse where the motions were heard since it was built—with over twenty years of experience with civil procedures and litigation prior to that—and he was already seated at the appropriate table with counsel for Defendant Keith Bolus when Plaintiff arrived. In light of these facts, Defendant Michael Bolus' behavior was strikingly unorthodox and imprudent: suggesting that a stratagem may have been contrived to trigger a calculated response from Plaintiff.

Evidently, Defendant Michael Bolus' dubious tactics succeeded in fomenting Plaintiff to manifest the desired, ostensibly spiteful demeanor for this Court to observe. When the hearing began, Plaintiff called upon the protection of a United States Supreme Court decision; this Court immediately admonished Plaintiff when stating that he would not be allowed to disrespect the Court, or to use the proceedings vindictively.

The Defendants wantonly and willfully violated Plaintiff's constitutional rights, and they are responsible for Plaintiff's wrongful imprisonment for a term of twenty years. For over two hundred years, there has been, "[A] settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." Marbury v. Madison, 5 U.S. 137, 147 (1803).

IX.

This Court has granted every motion that the Defendants have filed; dismissing this action, and striking the affidavit of William Gary White, III. Plaintiff's motions were filed prior to the dismissal of this case. During oral arguments Plaintiff requested that this Court review all of his responsive pleadings and motions prior to making a decision, and moved that should the Defendants prevail, that this matter be dismissed without prejudice.

There are no references to the *Complaint*, Plaintiff's responsive pleadings, or any of his motions in this Court's judgment: it appears that nothing Plaintiff has presented to this Court has been ruled on; and Plaintiff has met the sine qua non of the binding authority mandating that this action be heard by a jury. Plaintiff suggests that this Court has erred in ruling for the Defendants because of possibly being persuaded to believe that his motives are nefarious—as a result of Defendant Michael Bolus', likely, duplicitous ploy

Plaintiff believes that he has suffered at the hands of discrimination when he did not receive security equal to what any other victim would have enjoyed when Defendant Michael Bolus accosted him; and Plaintiff seems to have emerged as the party whom has been prejudiced for his reactive behavior. Moreover, Plaintiff feels that the dismissal of his lawsuit has violated his right to due process—to a trial by jury in suits of common law—and equal protection of the

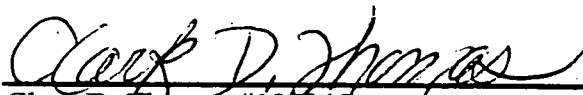
laws as guaranteed by the Fifth, Seventh, and Fourteenth Amendments to the United States Constitution.

X.

The failure to specifically rule on the issues precludes appellate reviews of the issues. Pruitt v. State, 423 S.E.2d 127 (S.C. 1992). It has been determined that unless no evidence is presented, the circuit court has not constituted a sufficient ruling if it does not set forth specific findings of fact and conclusions of law, and that a Rule 52 (a) and 59 (e) motion must be filed to preserve the issues for appellate review. Marlar v. State, Op. 26391 (Filed November 5, 2007). In the instant case, there was evidence offered and subpoenaed witnesses in attendance during oral arguments to present material testimony, and the judgment does not set forth specific findings of fact and conclusions of law.

WHEREFORE, Plaintiff prays that this Court will set forth specific findings of fact and conclusions of law; reverse the judgment of dismissal in this action; sanction the filing of the *Amended Complaint*; and for such other relief as this Court deems just and proper.

Respectfully submitted,



Clark D. Thomas #187845
BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210

April 29, 2011
Columbia, SC

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO.: 2010-CP-10-4820

CLARK D. THOMAS,)
)
 PLAINTIFF,)
)
 VS.)
)
 KEITH BOLUS, et al.,)
)
 DEFENDANT.)
 _____)

MOTIONS HEARING

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Wednesday, April 6, 2011, Commencing at 10:03 a.m.

SUSAN "MIA" PERRON, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: Pro Se

FOR THE DEFENDANT: Michael B. McCall, Esquire
Carlock, Copeland & Stair
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401

and

Michael T. Bolus, Esquire
Attorney at Law
2127 Dorchester Road, N., Suite 400
Charleston, South Carolina 29401

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EXHIBITS

[None]

PROCEEDINGS

THE COURT: Thomas versus Bolus.

[Whereupon, Mr. Thomas enters the courtroom]

THE COURT: All right. Are you Clark D. Thomas?

MR. THOMAS: Yes, ma'am, I am.

THE COURT: Mr. Bolus, do you recognize this individual to be Mr. Thomas?

MR. BOLUS: The one and only.

THE COURT: All right. Thank you.

And Mr. Thomas, the reason why I asked is we had this set several weeks ago and they brought the wrong Clark Thomas.

MR. THOMAS: Yes, ma'am.

THE COURT: And because I have never met you and Mr. Bolus has, he indicated to the Court that the previous Mr. Thomas was not you and so that's why I wanted to verify with Mr. Bolus that you are exactly the Mr. Thomas that we need.

All right. Counsel, you are?

MR. MCCALL: Mike McCall, Your Honor. I represent Keith Bolus.

MR. BOLUS: Tommy Bolus representing myself, Michael T. Bolus, and then Bolus and Bolus attorneys, which we accept -- assert is a non-legal -- a nonentity. But that's part of the case, whether we

1 are or not.

2 THE COURT: And we're here on defendant's motion
3 to dismiss Michael Bolus, filed July 12th of 2010;
4 defendant's motion to dismiss Bolus and Bolus, filed
5 July 14th, 2010; defendant's motion to dismiss Keith
6 Bolus, filed 7/14/2010; defendant's motion to strike
7 affidavit of William Gary White, filed 3/17/2011 and
8 3/21/2011; as well as defendant's motion to dismiss
9 Keith Bolus, July 14th of 2010. Is that correct?

10 MR. MCCALL: That's correct, Your Honor.

11 THE COURT: Is that correct, Mr. Bolus?

12 MR. BOLUS: Yes.

13 THE COURT: All right. Mr. Thomas, are you
14 prepared to go forward on all of those motions here
15 today?

16 MR. THOMAS: Yes, Your Honor.

17 If I could ask the Court to have my hands
18 released where I can litigate my case. I can't go
19 through my files and everything.

20 THE COURT: I'm going to ask Officer --

21 OFFICER ROBINSON: Officer Robinson.

22 THE COURT: -- Robinson: is that pursuant to
23 your policies and procedures?

24 OFFICER ROBINSON: Normally we keep them on, but
25 the final decision is left up to you, Your Honor.

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1 THE COURT: Mr. Thomas, I'm going to -- just
2 through policy and procedure, it's to keep them on.
3 If you're having a hard time, then you just let the
4 Court know. But we're going to try to work through it
5 keeping it on. All right, Mr. Thomas?

6 MR. THOMAS: Yes, ma'am.

7 THE COURT: All right. Thank you.

8 MR. BOLUS: Your Honor, in politeness, his mom is
9 here. Will you let her sit there if he wants --

10 THE COURT: I don't even have to ask Officer
11 Robinson because I know that is a violation --

12 MR. BOLUS: Okay. Well, I just thought --

13 THE COURT: -- of policies and procedures, unless
14 she is an attorney.

15 MR. BOLUS: No, she's not. I'm sorry.

16 THE COURT: All right. Thank you. And I
17 appreciate you asking. Thank you.

18 All right. And you are prepared to go forward on
19 all of those?

20 MR. THOMAS: Yes, Your Honor.

21 THE COURT: All right. Now, Mr. Thomas --

22 MR. THOMAS: Oh. I'm sorry. May I interrupt? I
23 had a motion in for -- a motion to amend to supplement
24 the pleadings, and that was filed on April 1st, and a
25 motion --

1 THE COURT: April 1st of this year?

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: It didn't make our motions docket.

4 MR. THOMAS: Okay. Fine.

5 THE COURT: You have to provide ten days notice,
6 and it's only April 6th, so it didn't make it.

7 MR. THOMAS: Okay.

8 THE COURT: All right. Thank you. Now, Mr.
9 Thomas, are you an attorney?

10 MR. THOMAS: No, ma'am. I'm a pro se.

11 THE COURT: And you are prepared to go forward at
12 this time without counsel?

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: Now, Mr. Thomas, I'm going to hold
15 you to the same standards that I hold Mr. McCall and
16 Mr. Bolus. Do you understand that, sir?

17 MR. THOMAS: If I may interject: I have some
18 case law from the Supreme Court that said that I would
19 be afforded some -- wouldn't be held to the same
20 stringent standards as those of the legal profession,
21 and I was anticipating some latitude in that respect.

22 THE COURT: Well, Mr. Thomas, I'm not going to
23 allow you to disrespect the Court.

24 MR. THOMAS: Oh, I'm sorry. I didn't --

25 THE COURT: And I am not going to allow you to

1 turn this into any sort of personal vendetta against
2 anyone in the courtroom here today. And that's what I
3 mean, Mr. Thomas.

4 MR. THOMAS: Oh, I'm sorry. I didn't mean
5 disrespect.

6 THE COURT: I'm going to hold you to the same
7 standards that I hold Mr. McCall and Mr. Bolus. Do
8 you understand --

9 MR. THOMAS: Yes, ma'am.

10 THE COURT: -- that, sir?

11 MR. THOMAS: Yes, ma'am.

12 THE COURT: And Mr. Thomas, my role is not to
13 help you. I'm merely a referee --

14 MR. THOMAS: Yes, ma'am.

15 THE COURT: -- here today, so I cannot give you
16 any assistance or legal advice. Do you understand
17 that, Mr. Thomas?

18 MR. THOMAS: Yes, ma'am.

19 THE COURT: And merely because you are appearing
20 pro se, you're not going to get any benefit. Do you
21 understand that, sir?

22 MR. THOMAS: Yes, ma'am.

23 THE COURT: All right. Nor does Mr. Bolus or
24 Mr. McCall get any benefit because you're appearing
25 pro se. Do you understand that, sir?

1 MR. THOMAS: Yes, ma'am.

2 THE COURT: All right. And Mr. Thomas, if you
3 have any questions, I just ask that you wait your
4 turn. What I'll do is I'm going to hear from Mr.
5 McCall and Mr. Bolus on all five motions and then I'll
6 allow you an opportunity to respond. So I ask that
7 you just hold any objections that -- or you may
8 object, but that you don't interrupt. I'm going to
9 give you all the time that you need to respond to
10 those motions. Do you understand?

11 MR. THOMAS: Yes, Your Honor.

12 THE COURT: If at any time you need me to explain
13 anything, if you would just say, Judge, could you
14 explain that to me, and I will do that for you.

15 MR. THOMAS: Yes, ma'am.

16 THE COURT: And that's what that Supreme Court
17 case says, Mr. Thomas, is that I will take a little
18 more time explaining some of the legal procedures.
19 But I cannot give you legal advice. That's --

20 MR. THOMAS: No --

21 THE COURT: -- the difference.

22 MR. THOMAS: No. I didn't mean that, Your Honor.

23 THE COURT: All right.

24 MR. THOMAS: I did not mean to disrespect the
25 Court. I apologize.

1 THE COURT: Thank you.

2 Mr. McCall, I'll be happy to hear from you.

3 MR. MCCALL: Thank you, Your Honor.

4 This is a legal malpractice action that Clark
5 Thomas filed against Keith Bolus and Tommy Bolus and
6 Bolus and Bolus arising out of Tommy Bolus'
7 representation of Mr. Thomas in an underlying criminal
8 matter. He was charged with kidnaping, criminal
9 domestic violence of a high and aggravated nature, and
10 sexual spousal battery in the underlying case from the
11 trial in July of 2008. Mr. Thomas was convicted and
12 sentenced to twenty years.

13 In July of -- excuse me -- June of 2010, Mr.
14 Thomas filed this action against all of the Bolus
15 folks that I just mentioned. And he filed a
16 complaint. It's a complaint that seeks damages for
17 alleged professional negligence. It was filed without
18 an expert affidavit, which is required pursuant to the
19 15-36-100.

20 The complaint doesn't allege that the statute of
21 limitations was getting ready to run or that any
22 additional time was needed. It doesn't explain why an
23 affidavit was not attached. Of course, the statute
24 allows in limited situations for an expert affidavit
25 to be supplemented within forty-five days if the

1 complaint alleges that the statute of limitations is
2 about to run and the affidavit could not have been
3 obtained because of that time constraint. That's not
4 alleged, of course, here. And, in fact, we filed --
5 all of us filed motions to dismiss, along with our
6 answers, in July of 2010. And Mr. Thomas initially
7 filed a response in August of 2010 that asserted that
8 he did not need an expert affidavit because the
9 allegations fell within the common knowledge
10 exception.

11 If we fast-forward to -- there's some other
12 deficiencies in the complaint that we've also raised
13 in our motion to dismiss and I'm happy to go through
14 those, as well. They include a failure to allege
15 innocence of the underlying charges, which is an
16 essential element in a legal malpractice action that
17 arises out of a criminal matter.

18 There are also some deficiencies, specifically as
19 to the allegations against Keith Bolus, because he's
20 not even named in the complaint other than in the
21 caption. And I'm happy to discuss those more in
22 detail.

23 But as far as the expert affidavit, the motion
24 was scheduled to be heard last month and the day
25 before the motion, of course, we received this

1 affidavit of Gary White. And that was almost nine
2 months after the complaint was filed. It was filed
3 without leave of Court. Of course, the motion hearing
4 did not go forward.. But we subsequently filed motions
5 to strike the affidavit of Gary White because it was
6 both untimely, and also because Mr. White has been
7 suspended from practicing law, and also challenging
8 his expert qualifications.

9 And so based on that, we believe the complaint is
10 subject to dismissal for failure to attach the
11 affidavit, and that the affidavit of Mr. White should
12 not be attached -- or should not be considered.

13 And I believe Your Honor indicated earlier that
14 the motion to amend was not filed in time. There is a
15 motion to amend that was filed -- which you've got
16 there -- on Monday, but it was obviously not filed in
17 time to be heard by Your Honor on this day.

18 THE COURT: All right. Anything further,
19 Mr. McCall?

20 MR. MCCALL: Well, Your Honor, just the
21 additional grounds that I mentioned earlier. And
22 I'm happy to go into those in more detail, if you
23 would like.

24 THE COURT: Yes, please.

25 MR. MCCALL: There's a case, a South Carolina

1 Supreme Court case, Brown v. Diaz, and that is a
2 criminal legal malpractice case. And the holding in
3 that case is very important because it says -- it
4 makes a distinction between a criminal legal
5 malpractice case and an ordinary civil legal
6 malpractice case. And the case says that in a legal
7 malpractice case arising out of a criminal matter,
8 there is an additional pleading burden on a plaintiff.
9 The plaintiff must allege and prove his innocence, as
10 an essential element, to establish that cause of
11 action. It's really a proximate cause issue because
12 if the criminal defendant -- or the defendant with
13 legal malpractice claim is not able to show his
14 innocence, then he's not able to show that his
15 incarceration was caused by anything other than his
16 criminal behavior.

17 And so -- there are two cases: Brown v. Diaz at
18 the Court of Appeals and then also at the Supreme
19 Court, which affirmed the Court of Appeals. The end
20 result of that case I believe is a bright-line test
21 that in a criminal legal malpractice action they have
22 to allege innocence. And innocence is not alleged in
23 this complaint.

24 And as I alluded to earlier, the other deficiency
25 with the complaint with respect to Keith Bolus is that

1 he's just named in the caption. He's not even named
2 in any of the paragraphs in the complaint itself. I
3 believe that's insufficient to -- to the extent that
4 the complaint otherwise survives, I believe that's an
5 insufficient cause of action against Keith Bolus.

6 Thank you, Your Honor.

7 THE COURT: Thank you. Mr. Bolus?

8 MR. BOLUS: Your Honor, I would obviously adopt
9 all of the arguments of my learned -- well, he's not
10 co-counsel, but counsel for my brother, Keith, and
11 just point out that the affidavit of Mr. White, when
12 it came eight months later, is still insufficient.
13 It's conclusory only. It doesn't even hit the
14 statute. It doesn't do any kind of -- it doesn't
15 allege any kind of investigation or anything. He just
16 mimics the complaint by concluding that if it's true,
17 then Mr. Thomas has a case.

18 I don't think the statute means that if some
19 lawyer signs his name to an affidavit saying, well, if
20 the complaint is true, then he's got a case -- that
21 wouldn't pass any kind of muster in summary judgment
22 or anything. You've got to do a little investigation,
23 and Mr. White has done nothing except mimic and
24 believe everything Mr. Thomas has told him.

25 And the affidavit is not only late, it's

1 deficient. And I supplied a couple of cases to the
2 Court.

3 He's on -- he's in suspension now. He's been
4 suspended other times. The affiant attorney, I don't
5 know him. Unfortunately, he was in my law school
6 class and I don't remember him. But there's another
7 case that -- he's just -- he's not credible because
8 the case he got suspended on a few years ago involved
9 forging documents to settle a case. So you're looking
10 at an attorney who has done something and, without
11 investigating the case, trying to support Mr. Thomas'
12 complaint. And it's just inadequate and we just
13 believe that the complaint, as filed, should be
14 dismissed. Thank you.

15 THE COURT: Thank you.

16 All right, Mr. Thomas. I'll be happy to hear
17 from you.

18 MR. THOMAS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. THOMAS: Naturally, the motion to amend is
21 extremely important in this matter.

22 THE COURT: Well, sir, that's not before me here
23 today.

24 MR. THOMAS: I understand.

25 I would like to stipulate here -- if I can to do

1 this --

2 [Whereupon, Mr. Thomas reviews documents]

3 MR. THOMAS: Before I begin, the motions that I
4 filed, you will be reviewing those before you make a
5 decision? All the --

6 THE COURT: No, sir. I'm hearing the motions and
7 I will rule on the motions that are in front of me
8 here today, independent of any other motions.

9 MR. THOMAS: No. I would refer to the motion in
10 response to this. In other words, they filed a
11 memorandum --

12 THE COURT: Your responses to their motions, sir?

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: Not the motions that you filed.

15 MR. THOMAS: Exactly.

16 THE COURT: I will consider everything that has
17 been filed up to this time.

18 MR. THOMAS: Okay. The reason I was saying, I
19 didn't want to read verbatim and belabor -- excuse me
20 -- belabor the Court with, you know, anything that you
21 would go over anyway, in an effort to --

22 Okay. To begin with -- and I revert back to --
23 what I wanted to be more clear on with that is I was
24 relying on their that -- that I would be held to less
25 strenuous standards as far as filing out complaints.

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1 Granted, the complaint was flawed because of my
2 inexperience.

3 And I guess my first issue I would like to
4 reflect on is the alleged innocence. Of course,
5 that's corrected in the amendment. But this also
6 involves a conflict of interest. The defendant,
7 Michael Bolus, and Bolus and Bolus, the law firm, took
8 on my exwife, who at the moment had a warrant out for
9 my arrest, a bench warrant, for failure to pay child
10 support. There was a dispute between my balance due
11 and I was with the belief that I wouldn't have to pay
12 it. And, anyway, I was proven wrong in that.

13 But at any rate, the same case law that he
14 referred to, as far as a criminal action, it does
15 require an innocence. But the conflict of interest
16 would not fall under the criminal statute. It would
17 be more of a civil nature or a domestic relations. So
18 I am interjecting that I don't feel that that would
19 fall -- I don't believe that that would fall under
20 that statute. So in relying on --

21 Goodness gracious, I'm nervous. I'm sorry.

22 THE COURT: Take your time, Mr. Thomas.

23 MR. THOMAS: Pardon me?

24 THE COURT: Take your time.

25 MR. THOMAS: Okay. Having said that, I don't

1 know, I've read case law -- and, let's see, I suppose
2 I should cite it, where I'm not required to present
3 the evidence of the case. But I don't want to omit
4 the opportunity to fully defend my action by omitting
5 that case, so I would ask Your Honor if I would be
6 required to state the case law and go into all of that
7 on that? And do I need to present evidence of my case
8 or is this a matter -- what I'm getting at is there is
9 a -- there is case law that says I'm not required to
10 present the evidence; just show the facts.

11 I'm relying on the general knowledge and within
12 the conflict of interest. It doesn't take a
13 professional to know that a lawyer can't represent
14 your exwife and leave you in jail. My mother
15 contacted the defendant, Michael Bolus, when I was
16 arrested on this bench warrant and asked him to help
17 me and he told her that it was a conflict of interest.
18 Now, he took her case after he hired me. He knew she
19 was my wife, exwife, because he went and did an
20 interview with her when I was arrested on these
21 charges. Yet he still took her as a client.

22 And I was left in jail, could not get out, and I
23 went to court where, you know, in complete disarray.
24 I've got moments in the transcript where you can see
25 that I was trying to get a shave. I've got affidavits

1 from people that said I looked terrible. The
2 defendant, Michael Bolus, even made a comment to the
3 judge that I was a mess. Okay? So it's --

4 And he allowed a sixth amendment right to a
5 speedy trial to expire. When it came time for
6 motions, he didn't make any motions at all. The only
7 motion he was concerned about was his protected day to
8 go on his vacation to Costa Rica. I have witnesses in
9 the courtroom that could justify -- or, excuse me,
10 substantiate that claim.

11 I've got affidavits where he sent witnesses home
12 that had extremely exculpatory evidence, extremely
13 valuable exculpatory evidence, to present on my
14 behalf. He told them they weren't necessary.

15 Specifically, my wife was stalking me. Okay?
16 She wasn't wearing the monitor attached to my
17 satellite monitor so that she could stalk me. These
18 witnesses here were there for that in the restaurant
19 when she came at me and tried to hug me. I tried to
20 get a bond reduction and get the satellite monitoring
21 off. Mr. Bolus didn't even bother to bring them to
22 the courtroom to try to get it off.

23 I was out waiting on trial for two years. I was
24 arrested for allegedly associating with prostitutes.
25 They told my exwife and then she got mad. She came to
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1 the courtroom and she told -- I documented forty-six
2 lies during trial to get me.

3 He didn't do anything for me. He didn't preserve
4 anything with a contemporaneous objection. He told me
5 if I didn't cop a plea and go to -- I would go to
6 prison for thirty years and he would take a trip to
7 Costa Rica. I've got witnesses in this courtroom that
8 can testify to that.

9 I don't know what possessed that man to abandon
10 me and do the way -- things that he did to me, but I
11 can tell you that my mother was seventy years old.
12 She cleaned out her retirement fund. She worked for
13 the State of South Carolina for thirty years. This
14 man took every dime of her money to represent her son,
15 and he abandoned me.

16 I am innocent of the charges and my -- well, I
17 can't refer to the amended complaint, but I assure you
18 that the motions in the court now will clearly evince
19 these facts.

20 Let's see. The -- with regard to the affidavit
21 of Mr. White, let's see if I can find it. If you'll
22 bear with me one moment, please.

23 [Whereupon, Mr. Thomas reviews documents]

24 MR. THOMAS: Further evidence on the stalking
25 that I referred to took place around --

1 Excuse me -- I can't find -- something very
2 significant just slipped from my mind.

3 [Whereupon, Mr. Thomas reviews documents]

4 MR. THOMAS: With regard to Mr. White -- until I
5 can recall that last matter -- he was a member of the
6 bar when he provided that affidavit for me. And he
7 reviewed the record. And I'm still relying on the
8 general knowledge, because of that -- like I say, it
9 doesn't take an expert to know that you can't
10 represent both sides of the adversarial defendants in
11 a domestic relations case.

12 And his actions directly conflicted with his
13 representation of me because I wasn't able to prepare
14 for my trial. There was no -- there was no defense.
15 And it was -- it was a -- I knew I was -- it took the
16 jury thirty minutes to convict me. He told the jury I
17 was guilty, he thought that I was guilty. I mean, it
18 was just a -- I never stood a chance.

19 Now, I have another affidavit that they were
20 served on April 1st. I would like to present that to
21 the Court.

22 THE COURT: April 1st of this year, sir?

23 MR. THOMAS: Yes, ma'am.

24 THE COURT: No, sir.

25 MR. THOMAS: No? Okay. I can't even refer to it

1 in any manner or shape, can I?

2 THE COURT: No, sir --

3 MR. THOMAS: Okay.

4 THE COURT: -- because they have not been given
5 notice.

6 MR. THOMAS: All right. With regard again to the
7 criminal -- or the innocence assertion and the fact
8 that no -- he didn't really get specific on the fact
9 that you had to be convicted or -- excuse me -- go to
10 PCR proceedings or prove your innocence prior to
11 allowing a case to go forward. But I will point out
12 that there's a conflict with regard to the evidence --

13 Oh, boy. Your Honor, I'm having trouble finding
14 my paperwork. Could you give me one moment?

15 THE COURT: Take your time, Mr. Thomas.

16 [Whereupon, Mr. Thomas reviews documents]

17 MR. THOMAS: Okay. I want to address the matter
18 of Defendant Keith Bolus. And this kind of touches on
19 the name of George Nichols. In 1992, there were some
20 charges related to my business checking account. I'm
21 an electrical contractor by trade. When I retained
22 the services of Bolus law firm, specifically Keith
23 Bolus represented me in that matter. I had assumed
24 the name George Nichols to evade arrest. I was trying
25 to get things in order before they got me. It was an

1 imprudent act, to be sure, but that's what I chose in
2 my youth.

3 At any rate, when I was finally arrested on the
4 charges and was going to court, I asked -- or informed
5 Mr. Keith Bolus, Defendant Keith Bolus, that I wished
6 to, you know, resume my birth name and go to court as
7 Clark David Thomas. He advised me not to do that, and
8 I did. And once I finished serving the three and a
9 half, four months that I was sentenced to in that
10 case, I resumed my name and I have so ever since then.
11 There are witnesses to that effect.

12 And once I was rearrested on these -- or re-
13 sentenced and -- or sentenced, rather, and went back
14 to prison, they stuck me with the name again and I
15 haven't been able to do anything about it.

16 I would like to present some witnesses, or the
17 witnesses that I have had subpoenaed, to establish the
18 truth and the allegations I made about the conflict of
19 interest. And I don't know if it's the proper process
20 to enter exhibits into evidence or not, but I'm
21 prepared to do so.

22 THE COURT: Do you have any objection to him
23 admitting affidavits?

24 MR. MCCALL: I do, Your Honor, and also
25 presenting witnesses. I mean, this is a motion to
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1 dismiss hearing and a motion to strike hearing, and so
2 I believe that the question is is whether Mr. Thomas
3 complied with the plain language of the statute and
4 whether his pleading in the four corners of the
5 complaint is sufficient to withstand a motion to
6 dismiss.

7 THE COURT: So you are objecting to any
8 affidavits?

9 MR. MCCALL: Well, the affidavits, I'm not sure
10 which ones he's referring to. We might already have a
11 copy of them, and in that case I would not have --

12 THE COURT: What affidavits --

13 MR. MCCALL: -- a problem with that.

14 THE COURT: -- do you have, Mr. Thomas?

15 MR. THOMAS: The affidavit that I do know they
16 have is my exwife, Carey Davis, with regard to the
17 conflict of interest.

18 MR. MCCALL: And I believe that's attached to the
19 complaint, Your Honor.

20 MR. THOMAS: That is.

21 THE COURT: It is. Thank you.

22 Anything further, Mr. Thomas, as far as
23 affidavits?

24 MR. THOMAS: Well, the rest of them were
25 submitted in the new motion so --

1 THE COURT: All right.

2 MR. THOMAS: If I may ask: since the motions
3 were made on the 1st, you'll make your ruling, will
4 those -- those motions may become moot if you dismiss
5 the case at that point; is that correct?

6 THE COURT: They could, yes, sir.

7 MR. THOMAS: Okay. For lack of knowledge of
8 procedure, is it out of line for me to object to that
9 on the grounds that I -- do I cite grounds and object
10 to that? I would like to object to that to preserve
11 it for review.

12 THE COURT: Well, I haven't issued my ruling yet,
13 Mr. Thomas.

14 MR. THOMAS: Oh, okay. I'm just asking.

15 THE COURT: All right. Thank you.

16 MR. THOMAS: I don't know. I know that a
17 contemporaneous objection is why I don't -- I'm not
18 getting an appeal. He made --

19 THE COURT: A little different procedure here --

20 MR. THOMAS: Yeah. Yeah. Okay.

21 THE COURT: -- Mr. Thomas.

22 MR. THOMAS: I just don't want to --

23 THE COURT: Thank you.

24 MR. THOMAS: I understand the finality of what's
25 happening here and I want to try to protect my

1 interest as best I can.

2 So as far as witnesses, is that -- he objects.
3 Does that mean no?

4 THE COURT: Mr. Thomas, we are here on the --
5 Mr. Bolus and Mr. Bolus are alleging that your
6 complaint is defective and, because it is defective,
7 it must be dismissed.

8 MR. THOMAS: Okay. All right.

9 THE COURT: Those are the only issues before us.

10 MR. THOMAS: All right. Well, in that matter
11 [phonetic], then, I would go to the matter of Keith
12 Bolus.

13 Mr. Bolus represented me before, as I mentioned.
14 I've had photographs taken of the fronts of their
15 businesses depicting signs, Bolus and Bolus, Bolus Law
16 Offices. And there -- and there's a number of
17 internet advertisements, you know, like localized
18 bulletin boards for lawyers to get on and those that
19 could not be altered immediately, they remained the
20 same. I'm not alleging anything. As a matter of
21 fact, that was probably a poor choice of words. But I
22 will say that their individual or their private
23 website did reflect a statement of individuality or
24 that they practiced law individually. However, the
25 website address is Bolus Law Firm and they do present
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1 themselves to the public as a law firm. And with
2 regard to that --

3 THE COURT: Did both Tommy and Keith Bolus
4 represent you, or is it your position that Mr. Keith
5 Bolus was simply a member of the firm?

6 MR. THOMAS: Yes, ma'am, that he's a member --

7 THE COURT: Which one?

8 MR. THOMAS: -- by vicariously being a member of
9 the form -- the firm being liable for the actions of
10 his partner.

11 THE COURT: But yet you just stated that on the
12 law firm website that it indicated to you, and you
13 were aware, that they practiced independently.

14 MR. THOMAS: Oh, no. That was after I started
15 investigating it. After I filed a complaint and they
16 said that he wasn't, then I started looking into it
17 and searching it. And they do say that on -- you
18 know, in their private web site. But, you know, that
19 -- I can't say for certain that they didn't change
20 that and add that little exclusionary statement after
21 the complaint.

22 THE COURT: Well, what evidence do you have, sir,
23 that they practiced together?

24 MR. THOMAS: The signs to the front of the
25 building, the website address, the Bolus Law Firm.

1 THE COURT: Is it Bolus and Bolus Law Firm, or
2 Bolus Law Firm?

3 MR. THOMAS: It says Bolus Law firm.

4 Let me look at the pictures because it's --

5 [Whereupon, Mr. Thomas reviews documents]

6 MR. THOMAS: The law offices of Tommy Bolus and
7 Keith Bolus. And then there -- the internet ads
8 stipulate Bolus and Bolus, over fifty years of
9 combined experience. That seems to allude to the fact
10 that they are practicing as a firm with the combined
11 experience thing --

12 THE COURT: Who did you hire, Mr. Thomas?

13 MR. THOMAS: Pardon me?

14 THE COURT: Who did you hire?

15 MR. THOMAS: Mr. Bolus. Tommy -- Mr. Michael
16 Bolus.

17 THE COURT: All right.

18 MR. THOMAS: And let me get to that.

19 [Whereupon, Mr. Thomas reviews documents]

20 MR. THOMAS: The Supreme Court in the case
21 Beasley vs. Kerr McGee Chemical [phonetic] -- I'm
22 sorry -- they were stating that any facts tending to
23 prove an agency relationship, the question is one for
24 the jury.

25 So I was kind of relying --

1 THE COURT: Mr. Thomas, I need -- this is my
2 court reporter. She's writing down everything that
3 you say --

4 MR. THOMAS: Uh-huh.

5 THE COURT: -- so I need you to make sure you're
6 speaking very loudly.

7 MR. THOMAS: Okay. Do I need to repeat that?

8 All right. Beasley vs. Kerr McGee Chemical Corp
9 [phonetic]. The Supreme Court in '79, 1979, stated
10 that any -- if there are any facts tending to prove an
11 agency relationship, the question is for a jury.

12 And I have some other case law with regard to
13 that.

14 [Whereupon, Mr. Thomas reviews documents]

15 MR. THOMAS: All right. In distinguishing
16 Seambro Corp vs. Jeffcoat and Martin [phonetic], the
17 Court expressed that where the negligence is so
18 obvious as to be within the common knowledge and
19 experience so that no special needed -- learning is
20 needed --

21 And I'm skipping issues and I apologize.

22 -- that there was no special learning needed, as
23 far as a professional affidavit.

24 Your Honor, I was under the impression that I was
25 going to be transported here this morning like my --

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1 Thomas Clark that was taken here last month or -- yes,
2 last month, and so I intended to spend all day
3 yesterday preparing my case and getting it in order.
4 They came by the evening before and informed me they
5 were packing me up. For the last thirty-six to forty
6 hours, I've been in transit from Columbia to here.
7 They locked me in a cell last night with no lighting
8 and I've had no opportunity to get my notes in order,
9 so I'm at an extreme disadvantage and I apologize.

10 THE COURT: Mr. Thomas, I'm giving you extreme
11 latitude in taking your time to review your material.

12 MR. THOMAS: I appreciate that. I just wanted to
13 explain to you why I wasn't better prepared. I would
14 have had everything completely in order.

15 [Whereupon, Mr. Thomas reviews documents]

16 MR. THOMAS: Okay. I couldn't find any case law
17 specific to requisites on confirmation of innocence,
18 that it had to be confirmed. Of course, he didn't
19 allege that, but I wanted to make certain that the
20 Court -- that I could make that point to the Court.

21 And I'm very reluctant to say things that may
22 disrespect the Court. What I said earlier, that was
23 not my intention. I would never insult the judge or
24 disrespect you.

25 [Whereupon, Mr. Thomas reviews documents]

1 MR. THOMAS: I'm going to reflect back on the
2 time frame in which I was to file my --

3 THE COURT: Hold on one second, Mr. Thomas.

4 [Whereupon, the Court and the law clerk confer]

5 THE COURT: All right, Mr. Thomas.

6 [Whereupon, Mr. Thomas reviews documents]

7 MR. THOMAS: All right, Mr. Thomas.

8 MR. THOMAS: Yes, ma'am. I'm trying to pick
9 up --

10 [Whereupon, Mr. Thomas reviews documents]

11 MR. THOMAS: I guess at this point I'm going to
12 have to rely on the -- and, of course, that's a
13 closing request that I would like to make with the
14 Court. And I would ask this Court -- I make a motion
15 that this Court hold -- what is it -- an interlocutory
16 or in limine, a motion in limine or something, to hold
17 your decision. I'm asking that this Court would do
18 that in order that they can review the amended
19 complaint.

20 Am I allowed to explain why about the lateness on
21 it --

22 THE COURT: Hold on one second.

23 Mr. McCall, in order to avoid transporting
24 Mr. Thomas, do you have time, and we'll move this
25 to the end of the docket, so that we could hear all of
MIA PERRON, CVR-CM

1 the matters today?

2 MR. MCCALL: Well, Your Honor, and that way we
3 would do -- the motion to amend would be heard? Would
4 Your Honor decide those motions in the order they were
5 filed?

6 THE COURT: Yes.

7 MR. MCCALL: Okay. But I haven't prepared for
8 the motion to amend --

9 THE COURT: All right.

10 MR. BOLUS: Judge, yeah. And I don't -- I hate
11 to belabor the situation, but I'm not prepared either,
12 because I get it Monday morning, and this is new
13 stuff.

14 If the first complaint is defective and not
15 allowed, then he needs to start over or do something
16 he's doing -- you know, we're not --

17 THE COURT: So the answer is no?

18 MR. BOLUS: Yes.

19 THE COURT: Yes. Thank you. All right.

20 Mr. Thomas, all right. Anything further that I
21 need to hear about these motions?

22 MR. THOMAS: Well, yes, ma'am.

23 Like I said, I'm putting forth a motion to ask
24 that you consider the -- all of the motions, before
25 you make your final determination.

1 In the event that you do decide that my motion or
2 my complaint is defective and I haven't -- I know that
3 I've reached the hurdles in the final complaints. I'm
4 confirm -- I'm absolutely positive of that. There's
5 no question about that. I have Michael Versey
6 [phonetic]. He's assistant disciplinary counsel with
7 the --

8 THE COURT: Mr. Thomas, I need you to focus on
9 the motions in front --

10 MR. THOMAS: Okay. All right.

11 THE COURT: -- of us here today. Thank you.

12 MR. THOMAS: All right. Okay. Based on these
13 motions, should this Court determine that I have
14 failed to meet the requisites for filing of the
15 complaint as it's -- according to law and that the
16 common knowledge doctrine does not apply to such a
17 flagrant case -- in my opinion, excuse me -- in my
18 opinion, a flagrant case of conflict of interest, I
19 would move that you do dismiss -- if you do dismiss,
20 that you dismiss without prejudice and toll the
21 statute of limitations until such time as I can
22 perfect or at least get the amended complaint in or
23 whatever it takes.

24 And I don't know if this is premature or not, but
25 I would like to also put on the record of my intent to
MIA PERRON, CVR-CM

1 appeal if the decision is unfavorable or whatever. I
2 don't know how that goes.

3 I'm not trying to disrespect you. Like I say,
4 something terrible happened to me. I'm an innocent
5 man. I may not have made that allegation in the
6 complaint. I thought it was a given since I'm in
7 direct appeal and I took a jury trial. A man just
8 doesn't take a jury trial and fight for his life if
9 he's not asserting his innocence. I presumed it would
10 be a tacit -- to be tacitly spoken that way.

11 So given that, I suppose that's about as much as
12 I can do for myself at this stage, and I appreciate
13 your listening.

14 THE COURT: All right. Thank you, Mr. Thomas.
15 Briefly, anything further?

16 MR. MCCALL: Very briefly, Your Honor.

17 I wholeheartedly disagree that the conflict of
18 interest is a matter of common knowledge, that
19 laypersons could understand without any testimony.
20 And South Carolina code 15-36-100, the legislature
21 drafted that statute and enacted it for a reason. And
22 if the statute means anything, it means that Mr.
23 Thomas' complaint should be dismissed. Thank you,
24 Your Honor.

25 MR. BOLUS: I agree, Your Honor. The ethics

1 situation, I've already gotten prepared for that. But
2 that -- a lot of what he's arguing can be taken up in
3 another situation, like a complaint or something,
4 because it's -- I've got that handled. There's no
5 conflict. He argued conflict, but it has nothing to
6 do with his real innocence or being found guilty.
7 That's just, you know, two different things, in my
8 opinion. It would be apples and oranges in his
9 complaint arguing. Since we're an ethical complaint
10 versus me not doing something is just two different
11 things in my book.

12 THE COURT: All right. I'm going to take these
13 five motions under advisement. You'll have my ruling
14 within -- by close of business this week, which is
15 Friday.

16 Mr. Thomas, you have the right to appeal any
17 decision that I may render.

18 All right. Good luck to you, sir.

19 MR. THOMAS: Thank you.

20 MR. MCCALL: Thank you, Your Honor.

21 [HEARING CONCLUDES AT 10:41 A.M.]
22
23
24
25

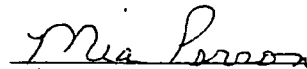
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Kristi L. Harrington, on Wednesday, April 6, 2011.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 9th day of June, 2011.



Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

Michael Tommy Bolus

ATTORNEY AT LAW
2127 BOSCHWINE ROAD
NORTH CHARLESTON, SOUTH CAROLINA 29405
OFFICE (803) 747-1225 FAX (803) 747-1225 HOME (803) 775-0825
E-mail: champs@boluslaw.net

June 12, 2006

FAX (803) 926-1771 and U.S. MAIL

Carol Ann Cook
202 Shadowfield Dr.
West Columbia, SC 29169

RE: State of South Carolina vs. Clark David Thomas
Charge: CDV and Kidnapping
Date of Arrest: 06/08/06
Warrant No.:
Arresting Officers:
Arresting Agency: North Charleston Police Department

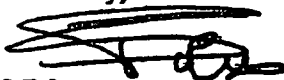
Dear Ms. Cook:

This is to confirm our conversation that for the sum of \$9,300.00, I will represent your son, Clark David Thomas, for a Preliminary Hearing/Bond Reduction Hearing, and any plea bargaining with the Solicitor, and/or a trial. The fee does not include a possible appeal to any other courts, but only includes all of my activities up through a trial or guilty plea.

You told me that your retirement funds would be in within the next 5-7 days and upon receipt of same, you will send me a certified check in the amount of \$9,300.00.

If you agree with the terms of this contract, please sign the bottom of the letter where noted and fax this back to me. I will meet with your son tomorrow at the Charleston County Jail. I will also inform you as to the date and time of the Preliminary Hearing.

Sincerely,



Michael Tommy Bolus

MTB/tmb

Enclosures: none
cc: file

I agree with the terms and conditions of the representation of my son, Clark David Thomas, by attorney, Michael Tommy Bolus as stated above.


Carol Ann Cook

Date: 6/12/06

6. **I SPECIFICALLY UNDERSTAND AND AGREE** that **MICHAEL TOMMY BOLUS**, reserves the right at all times to withdraw from representing me in the event a conflict arises, or I have failed to satisfy any bills within **THIRTY (30) DAYS**, or in the event there is any substantial disagreement between us. Should this occur, I understand that **MICHAEL TOMMY BOLUS** will provide me with sufficient written notice, so that I may have the opportunity to employ other counsel. I further understand and agree to sign any documents relative to a substitution of attorneys in the event of such withdrawal.
7. I agree to promptly reimburse, upon presentment with a billing statement, **MICHAEL TOMMY BOLUS**, for all expenses incurred on my behalf in connection with my case, including but not limited to filing fees, service of process fees, Court costs, Court stenographer and pre-trial expenses. I understand also that I may be required to deposit funds for such expenses in advance to the escrow account of **MICHAEL TOMMY BOLUS** for disbursement to the appropriate individual or agency or business. I understand also that all costs are specifically in addition to the retainer fees in Paragraphs 2 and 4 above.

I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE ABOVE AGREEMENT, ACCEPT THE TERMS OF THE SAME AND HAVE THIS DATE RECEIVED A COPY OF OUR AGREEMENT.

DATE: 6-20-06

ATTORNEY: M. T. Bolus
MICHAEL TOMMY BOLUS

DATE: 6-20-06

CLIENT: C-D

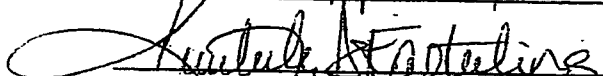
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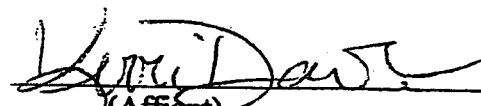
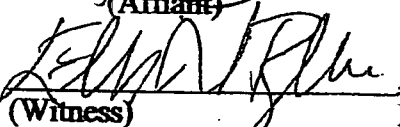
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However, I later explained this fact to the arresting officers and the case was dismissed;

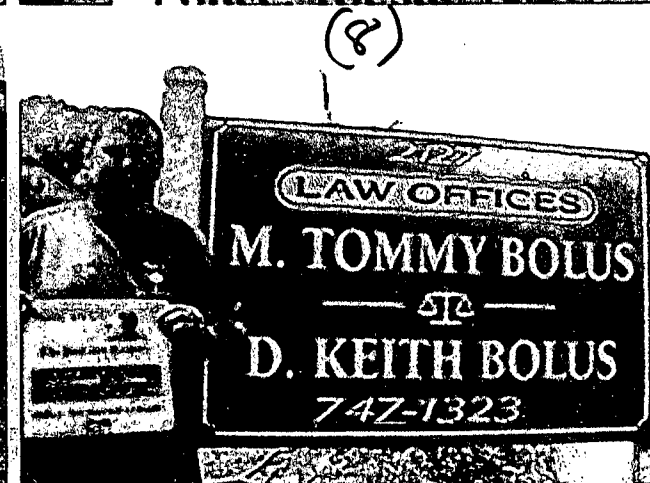
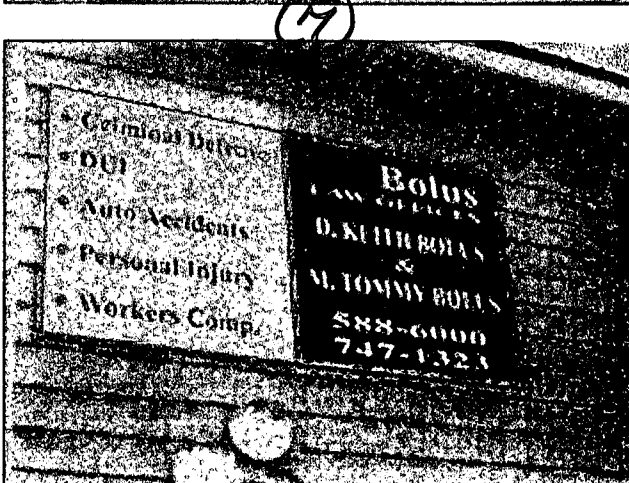
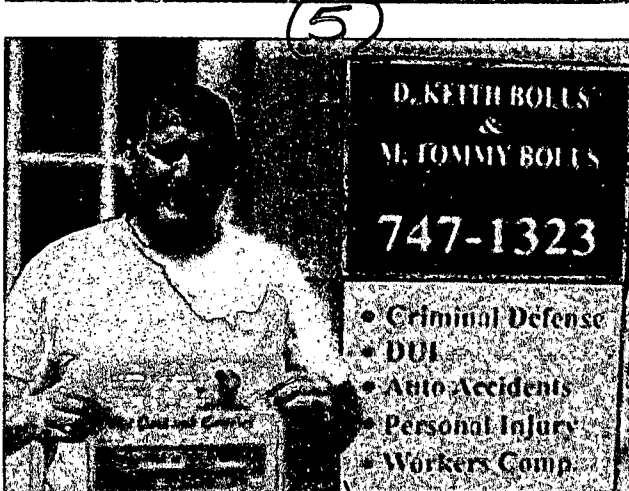
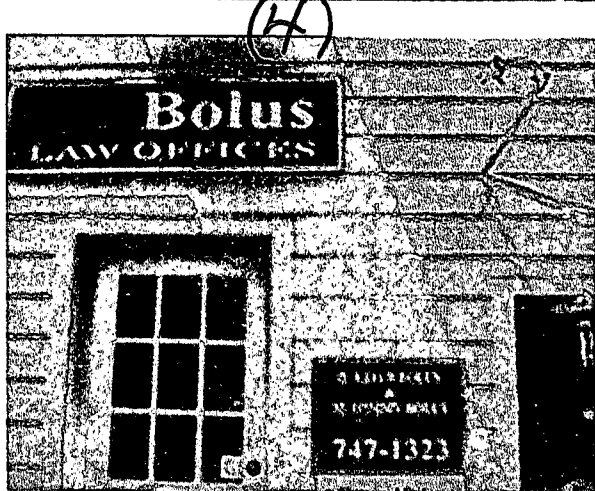
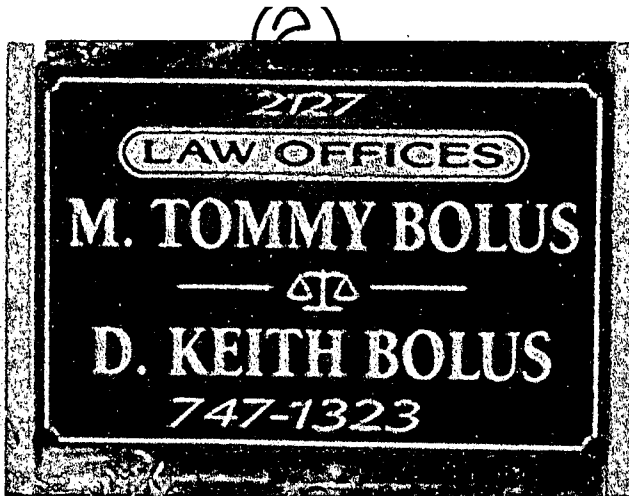
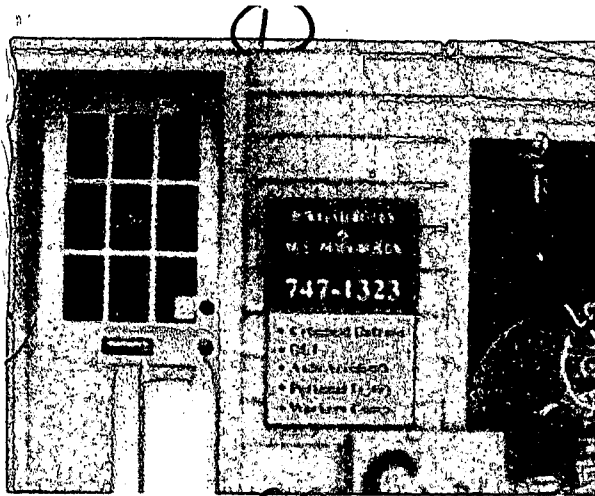
- 4) during our years together and apart, I have never seen Clark act out or participate in any violent or aggressive behavior;
- 5) Clark is a very smart, compassionate, and devoted man whom has always been supportive of our daughter and loves her very much;
- 6) Clark is a hard working man that had always provided for his family as an independent electrical contractor;
- 7) I met Michael T. Bolus when he interviewed me with regard to these charges against Clark;
- 8) following my arrest in 2008 for driving under the influence, I retained Mr. Bolus' representation;
- 9) Clark and I were disputing a matter in family court in which a bench warrant for his arrest had been issued prior to hiring Mr. Bolus that was active when he accepted my case;
- 10) Mr. Bolus knew that I was Clark's ex-wife;
- 11) I will appear in any court to attest these facts.

Subscribed and sworn to before me this
day of April, 2010


(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6/30/2016

 4/1/10
(Affiant) Date
 04/01/10
(Witness) Date





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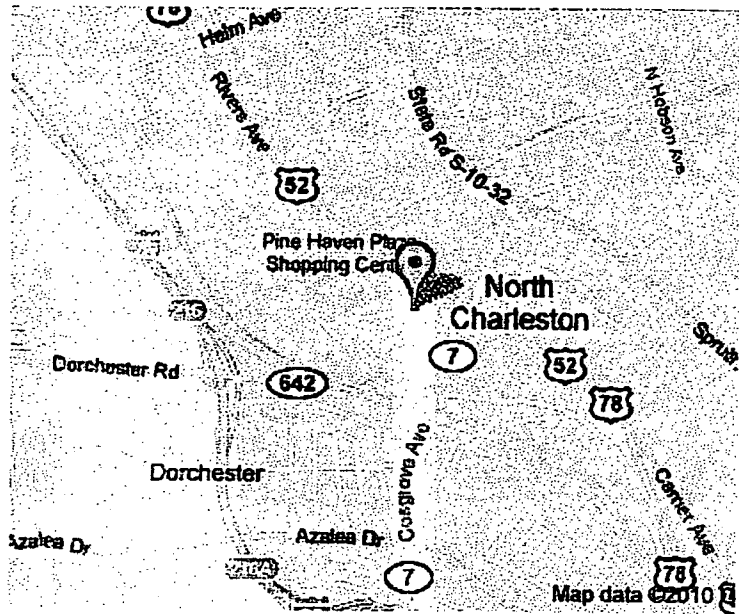
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Sort results by: Best Match					
1		Bolus Law Offices 2127 Dorchester Rd, North Charleston, SC 29405 Map (843) 747-1323 Website Hear More Yellow Pages Ad More Where: North Charleston inside Mark Clark What: Medical Malpractice Attorneys	0.3 miles	Be the first to review	
2		Richard Wern Lawyers 2185 Ashley Phosphate Rd, North Charleston, SC 29406 Map (843) 553-0007 Website More Where: North Charleston outside Mark Clark What: Medical Malpractice Attorneys	0.9 miles	Be the first to review	
3		Clekis Law Firm PA 171 Church St, Charleston, SC 29401 Map (843) 225-5253 More Where: South of Broad What: Medical Malpractice Attorneys	5.8 miles	Be the first to review	
4		Wern Richard Lawyers 2185 Ashley Phosphate Rd, North Charleston, SC 29406 Map (843) 553-0007 Website More Where: North Charleston outside Mark Clark What: Personal Injury Law Attorneys	5.9 miles	Be the first to review	
5		Local Medical Malpractice Lawyers Serving the North Charleston Area. (800) 539-4699 Website More What: Medical Malpractice Attorneys			
6		Rosen Rosen & Hagood LLC 134 Meeting St, Charleston, SC 29401 Map (843) 577-8728 Website Yellow Pages Ad More What: Attorneys	5.8 miles	Be the first to review	
7		Lesith Bouch & Seekings, LLP 92 Broad St, Charleston, SC 29401 Map (843) 937-8811 More What: Medical Malpractice Attorneys Attorneys	6 miles	Be the first to review	
8		Axelrod & Associates 635-F East Bay St, Charleston, SC 29403		Be the first to review	

Map North Charleston Results Expand Map

Featured Medical Malpractice Attorneys

Richard Wern Lawyers
2185 Ashley Phosphate Rd, North Charleston, SC 29406
(843) 553-0007
Website More

Local Medical Malpractice Lawyers
Serving the North Charleston Area.
(800) 539-4699
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Sponsored North Charleston Medical Malpractice Attorneys

Local Medical Malpractice Attorney

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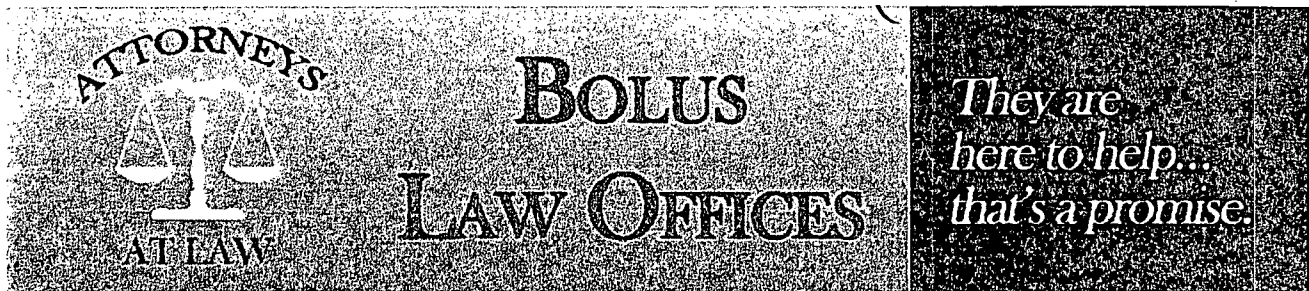
Medical Malpractice Law in Pennsylvania
(www.klineinspector.com)
Get a free evaluation of your case from Kline & Specter.

Medical Malpractice Attorney
(www.RobertDodsonLaw.com)
Malpractice, Negligence & Surgery Error Lawyer. Free Consultations.

Charleston Medical Malpractice Attorney
(www.wernlawyers.com)
If you or a loved was injured by a medical professional, call today.

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Medical Malpractice Attorney (fourielawfirm.net)
50 Yrs Exp with Medical and Nursing Home Cases. Call for Free Consult.



WELCOME

LEGAL SERVICES

ABOUT THE ATTORNEYS

LOCATE US

CONTACT US

web audio

owner sign-in

Law Offices of:

Keith Bolus

Email: dkboluslaw@bellsouth.net

Cell Phone No.: 843-693-7189

Tommy Bolus

Email: chasshark@bellsouth.net

Cell Phone No.: 843-696-1651

2127 Dorchester Road
North Charleston, SC 29405
Tel: 843-747-1323

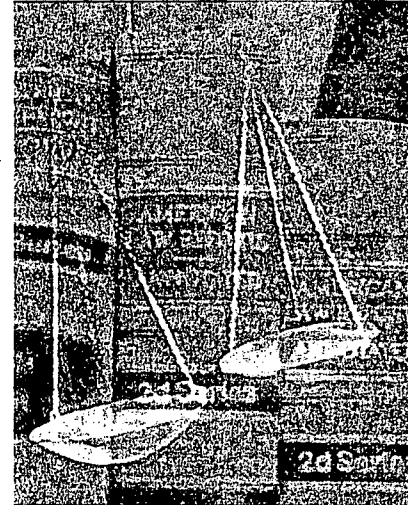
23½ Center Street
Folly Beach, SC 29439
Tel: 843-588-6000

Welcome

Welcome to the Bolus Law Offices, located at North Charleston, and Folly Beach, South Carolina. They specialize in personal injury, criminal defense, and DUI cases. They believe that each of their clients deserve quality legal representation and individual attention.

If you or a loved one have been charged with a criminal offense, or have been injured in an accident, you need a good lawyer. They're here to help...that's a promise.

D. Keith Bolus is a former Assistant Solicitor and Hanahan City Prosecutor.
Michael Tommy Bolus is a former Municipal Judge.



The attorneys are independent lawyers and do not operate as partners.

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Clark David Thomas #187845
F-3, #141
Kirkland Correction Institute
4344 Broad River Road
Columbia, South Carolina 29210

November 14, 2006

Michael Tommy Bolus
Attorney At Law
2127 Dorchester Road
North Charleston, South Carolina 29405

Dear Tommy,

I am very upset about this Bond Reduction Hearing. You did not tell me that I would be exhausting my only shot when we did the last hearing. I am paying you to advise me and now I suffer as a result. I have been doing this long enough to know that I have to listen to my legal counsel.

I am hereby requesting that you refund \$7,300.00 to me in order that I can retain effective legal counsel. You failed to visit me prior to both my last Bond Reduction and this 1- year sentence you hung me with. In fact, the only matter that I can see you helped with was getting a \$50,000.00 Bond set on the "Sexual Battery on Spouse" charge.

I informed you of my desire to request "Time Served" on the probation charge. Had you bothered to see me, I would have refreshed your memory. Now I am really having a rough time and to no avail. We should have released you when you called me a "Manipulative Pain In The Fucking Ass." I called my mother and demanded that you be fired then, but she believed in you.

I believe that \$2,000.00 is more than enough to pay you for basically accomplishing nothing. I need it all to hire a non-biased attorney who does not allow his personal feeling to affect his representation.

Sincerely I Remain,

Clark D. Thomas

Clark D. Thomas

Michael Tommy Bolus

ATTORNEY AT LAW
2127 DORCHESTER ROAD
NORTH CHARLESTON, SOUTH CAROLINA 29405
OFFICE (843) 747-1323 FAX (843) 747-1325 HOME (843) 795-0855
E-mail: chasshark@bellsouth.net

November 22, 2006

Kirkland Reception & Evaluation Center
George Keith Nichols #187845
F-3 Cell 141B
4344 Broad River Road
Columbia, SC 29210

RE: State of South Carolina vs. Clark David Thomas
Charge: CDVHAN and Kidnapping
Date of Arrest: 06/08/06
Warrant No.: K-120150 and K-120149, I-099401
Arresting Officers: Officer Talbott and Officer Brazelton
Charge: Sexual Battery of Spouse
Date of Arrest: 6/20/06
Arresting Officer: Rowan
Arresting Agency: North Charleston Police Department

Dear David:

I received your tirade dated 11/14/06. You can go ahead and fire me, but I am not going to refund any money to you, as I have already earned it. I call your attention to the contract and my letter to your mother, copies of which I am enclosing to you, which indicated that \$9,300.00 was a "non-refundable retainer fee".

Your mother called me on your behalf and I quoted her a \$20,000.00 fee to handle your case. She said she could not pay that kind of money and after a few phone calls, I told her that I would reduce my fee to \$10,000.00 due to her precarious financial situation, and the fact that I had represented you before. She then informed me that she could come up with \$9,300.00 from her retirement fund. We then agreed that that would be the fee. My position is that the attorney's fees associated with your representation should have been in the vicinity of \$25,000.00 to \$35,000.00 and some lawyers in downtown Charleston would have charged between \$50,000.00 and \$100,000.00. Nevertheless, my fee of \$9,300.00 is very reasonable, and is about 1/2 of what I should have charged you.

You have the right to fire me because you are the client. However, just because you fire me does not mean that you get a refund. My file is quite thick and I have

done a lot of work on your behalf. I have attended a Preliminary Hearing, two Bond Reduction Hearings and a Probation Revocation Hearing for you. I also attended your Bond Revocation Hearing. I sent out countless letters and talked to you and your mother at least 25 times, night and day. I have filed Discovery Motions and a Motion for Speedy Trial.

I told you on several different occasions that you simply cannot go back to court every month or so for a bond reduction. You get two chances at a bond reduction, one being at the Preliminary Hearing in front of the Magistrate, and the second being in front of the Circuit Judge. You had your chance at both hearings and both judges thought that the bond in effect was adequate. If you remember, at your bond modification hearing in front of Judge Dennis in the Charleston County Court of General Sessions, he implied that the bond was low for a case such as yours.

I had conversations with your mother and told her you should not hurry up your hearing. Also, David, I warned you about making me file a Motion to Modify the Bond with the Circuit Court. I told you at that time that you only get "one bite at the apple" and that it was too soon for you to appear in court and argue for a bond reduction. I advised you not to file the Motion to Reduce Bond until after your probation revocation hearing. Even if I was successful in having the bond reduced, and somehow you were able to pay a bondsman to get you out of jail, you would still have gone to prison on the probation revocation matter and you would have wasted your money with the bondsman. When you return to Charleston, you can file a Motion for Bond Reduction if you can show a change of circumstances.

Regarding your request for "time served" on the probation charge, you do not remember that I told the judge you had served four months and a few days in jail. He took that into account and gave you credit against the time that he gave you, which is one year. That means that your 12 month sentence should be reduced by the time you from June 19, 2006 through October 23, 2006 on the probation revocation warrant.

Even if the judge had given you "time served" on your probation revocation, you would still be in jail because you do not have the money to post the bond on the other charges. Also, David, everyone you told me would be witnesses for you either never called me and/or either did not want to get involved because they would be admitting to drug use with you and possible accessory to kidnapping. You gave me numerous names of people who were doing drugs in the hotel room that week with you and your wife, and I dare say that none of those people want to get involved.

I never called you a "manipulative pain in the fucking ass". I did tell you, and I told your mother, that you were manipulative because you were trying to get her to borrow money or use her house as collateral to post a bond for you. Frankly

she did not have enough collateral to post a bond, as she would have to give a bondsman 10% plus enough collateral to secure the bond. Your main problem is that you do not accept responsibility for your actions and want other people to feel guilty when they can't help you out of a jam.

In summation, David, the crimes for which you are charged are very serious, and that is the reason the bond is high. I have represented people over the course of 30 years, and in some cases, those persons bonds were a lot higher for less serious charges.

I assume by your letter that you have fired me, so we will deal with that matter when you come back to Charleston after doing your time for the probation revocation sentence. At that time, maybe you will have come to your senses. If you still want me to represent you at that time, I will continue to represent you and attempt to negotiate a plea bargain with the prosecutor. I told you all along that if we could negotiate a plea whereby the kidnapping charge disappeared, and you pled to the other charges, you could probably look at receiving a sentence whereby you would do five or six years active time.

I am sorry that you are angry with me, but you sound like a person who is still blaming everyone else for his problems.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Tommy Borus". The signature is stylized with a large, looping "M" and "B".

Michael Tommy Borus

MTB/tmb

Enclosures: Contract, 6/12/06 letter to Carol Cook

cc: Carol Cook w/enclosures
file

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICAL CIRCUIT

STATE OF SOUTH CAROLINA,
PLAINTIFF,

-VERSUS-

CLARK DAVID THOMAS
Defendant,

AFFIDAVIT OF
Carol Ann Cook

Charge: Kidnapping, CDVHAN

Date of Arrest: 06/07/06

Warrant No.s: K-120149,
K120150

Arresting Officers:

Talbott, Brazelton, & Rowan

Arresting Agency:

North Charleston Police

Indictment No.s

2006-GS-10-12295 and

2006-GS-10-12296

Comes now, being duly sworn and deposed, Carol Ann Cook
(Name)
202 Shadowfield Drive, West Columbia SC 29169, under penalty
(Address) (City) (State) (Zip Code)

of perjury that the following statements are true and correct to the best of my knowledge and belief.

- 1) Clark David Thomas, defendant in the above entitled action, is my son;
- 2) on or about the date of June 11, 2006, I retained Michael T. Bolus to represent Clark as his lawyer;
- 3) on or about the date of June 21, 2006, Clark contacted me and said that Mr. Bolus had called him a, "manipulative pain in the fucking ass:" and urged me to fire him;
- 4) while in the company of Cathy Meree at Clark's preliminary hearing, she enlightened me that she, exclusively, had taken all of Clark's personal property—including his

computer—from the hotel room where he lived with Rachel Crowley. I immediately informed Mr. Bolus, and asked him to help me get Clark's possessions back; since Clark was in jail and could not do it himself. Mr. Bolus told me that because Clark's personal effects were marital assets, there was nothing we could do about it;

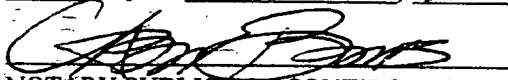
- 5) in early July of 2006, Clark instructed Mr. Bolus to file a motion for speedy trial;
- 6) Mr. Bolus called me suggesting that I persuade Clark to withdraw his speedy trial request, or he would go to prison for forty to fifty years;
- 7) My daughter—Melanie Lucius—and I were escorted through the jail, by Mr. Bolus, to see Clark after a bond hearing. Mr. Bolus did not discuss any plans for a trial during this visit.
- 8) Mr. Bolus persistently urged Clark to change his plea to guilty;
- 9) Mr. Bolus, and his paralegal Tina Bell, were petulant when discussing Clark. Mr. Bolus revealed the depth of his animosity on July 02, 2008: compelling me to send an email to him in Clark's defense, against his adversarial remarks;
- 10) Kerri W. Davis initiated a Family Court bench warrant against Clark and he was arrested: I contacted Mr. Bolus and requested his help. He refused to intercede, and said that he was representing Ms. Davis—who is Clark's ex-wife—on a legal matter, and that it would be a conflict of interest;
- 11) Mr. Bolus contacted me July 08, 2010, to inform me that Clark's trial would begin the following day: It disturbed me that he was rattled by my planned attendance;
- 12) my sister, Cynthia Gordon, attended trial with me, and we had planned to testify on Clark's behalf. Teddy and Krystal Martin were present and were also determined to testify in his support. Mr. Bolus refused to present any of us as witnesses. He then

advised the Martin's they could leave. When I asked him why the rest of Clark's witnesses were not present, Mr. Bolus said that all of his witnesses were drug addicts, and no one would believe them;

- 13) Mr. Bolus disclosed that he would miss his flight to Costa Rica if Clark's trial lasted too long.
- 14) on July 09, 2008, Clark passed me a note during trial—through Mr. Bolus—requesting a suit, and an electric razor. The following morning, I arrived at the courthouse with these items, but Mr. Bolus—who was the only person authorized to give Clark his new suit—arrived moments before court was in session: preventing Clark from changing. He was in complete disarray—being unshaven and wearing the same disheveled clothes—throughout his entire trial. Clark's appearance suggested that he was carelessly indifferent to the seriousness of the matter on trial;
- 15) in the course of trial, I observed Clark seeking advice from Mr. Bolus, but he ignored Clark: and continued to read a book based on Ben Franklin;
- 16) on the second day of trial—before opening arguments—Clark asked Judge Jefferson if he would be allowed to assist in his defense: she told him that he would have to ask his lawyer;
- 17) Mr. Bolus told the jury horrible things, about Clark, that were untrue that I considered to be damaging. The jurors appeared horrified: and wouldn't even look at him when he testified. Mr. Bolus' paralegal—Tina Bell—said that she could tell the jury did not like Clark.
- 18) Mr. Bolus informed me that Clark could appeal his convictions, but he also said that it would be a waste of time;

- 19) My son is very intelligent, compassionate, and non-violent. I know in my heart that he is incapable of committing the acts alleged by Ms. Crowley;
- 20) I will testify to these facts when called to do so.

Subscribed and sworn to before me this
7TH day of JANUARY, 2011

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12-22-2018

 1/7/11
(Affiant) Date

(Witness) Date

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
CITY OF SUMMERVILLE,

~~Plaintiff,~~

-versus-

KERRI WELCH DAVIS

Charge: DUI

Ticket No.: 75183 EA

Date of Arrest: 07/06/07

Arresting Officer: PFC S. E. Driggers

Arresting Agency: Summerville Police

Defendant.

) IN THE MUNICIPAL COURT OF THE
) CITY OF SUMMERVILLE

CC-1

**SUPPLEMENTAL MOTION
AND REQUEST TO PRODUCE
PURSUANT TO SC RULES OF
CRIMINAL PROCEDURE 5 & 6**

TO: PFC S. E. DRIGGERS, SUMMERVILLE POLICE DEPARTMENT

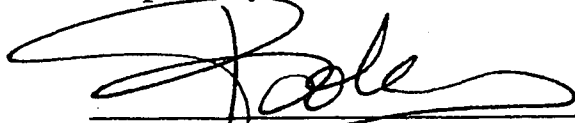
The Defendant hereby supplements her previous Discovery Motions filed herewith, and requests that the City of Summerville produce the following documents to her attorney:

- 1) All DUI tickets and documents;
- 2) DataMaster checklists;
- 3) DUI questionnaire report;
- 4) Toxicological reports;
- 5) Medical reports;
- 6) Laboratory reports;
- 7) Chemists reports;
- 8) Any reports related to the analysis of my client's urine sample.

Furthermore, pursuant to Rule 6 of the SC Rules of Criminal Procedure, the Defendant objects to the introduction of any of the above requested reports and documents without the person or persons who prepared said reports or performed any function relative to the information contained in said reports, being personally present at trial. Furthermore, the Defendant demands the appearance in Court of all persons within the chain of custody

of any and all physical evidence, reports or documents which the City intends to introduce at trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bolus", written over a horizontal line.

MICHAEL TOMMY BOLUS

Attorney for Defendant

2127 Dorchester Road

North Charleston, SC 29405-7763

(843) 747-1323

Date: 2/19, 2008
North Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Clark D. Thomas,

Plaintiff

vs.

Blus & Bolus, Attorneys,
Keith Bolus, officially,
Michael T. Bolus,
Officially and individually,

Defendants.

IN THE COURT OF COMMON PLEAS

NINETH JUDICIAL CIRCUIT

Civil Action #: 10-CP-10-4820

AFFIDAVIT OF
WM. GARY WHITE, III

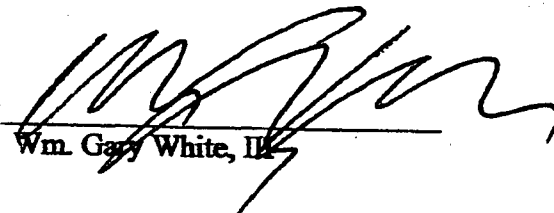
JULIE J. AMSTRONG
CLERK OF COURT

2011 FEB 16 PM 3:50

I, Wm. Gary White, III, Esq. being first duly sworn, do depose and state:

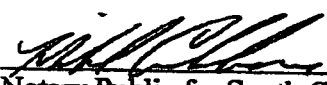
1. I was admitted to the South Carolina Bar May 12, 1976, and am still an active member.
2. For twelve (12) years I was a Criminal Justice Instructor at Midlands Technical College. I have a practice mainly consisting of Federal civil rights violation suits, which involves a great deal of application of criminal law practice. I also am and have been involved in criminal practice in General Sessions and Magistrate Courts. I have tried cases in both General Sessions and Magistrate Courts. I am familiar with the applicable standards of care involved in such practice.
3. I was asked by Carol Ann Cook, the Plaintiff's mother to review various documents prepared by the Plaintiff respecting his criminal charges of Criminal domestic Violence of a High and Aggravated Nature and Kidnapping. These documents included: his complaint; Motions to Dismiss and Reply; Developed Case Record; Court of Appeals Brief; and the Trial Transcript (which I reviewed relevant portions of).
4. After reviewing the Plaintiffs allegations, it is my opinion to a reasonable degree of legal certainty that, if true the following factual allegations would constitute a violation of the applicable legal standard of care and would have adversely affected Plaintiff's defense and the outcome of his trial:
 - a. In representing Plaintiff's ex-wife, Kerri W. Davis, dividing his loyalties, when the two were involved in a Family Court child support Rule, resulting in Plaintiff's incarceration prior to his trial on his criminal charges;
 - b. In failing to consult with the Plaintiff regarding a plea to a lesser included offense;
 - c. In failing to motion the court to dismiss all charges after a motion for a speedy trial had been granted and, subsequently expired;
 - d. In failing to subpoena witnesses at Plaintiff's request, who could have testified favorably for Plaintiff;
 - e. In failing to impeach adverse witnesses with their prior statements;
 - f. In failing to object to misrepresentations of Plaintiff's criminal history;

- g. In failing to secure evidence of the alleged victim's medical history to challenge contentions regarding her injuries;
- h. In failing to object to evidence presented on the eve of trial that he had not had time to review and prep for;
- i. In failing to meet with the Plaintiff and formulate a coherent defense;
- j. In refusing to withdraw from representation and refund Plaintiff's retainer fee;
- k. In failing to follow Plaintiff's directives to ask for a continuance;
- l. In failing to timely inform Probation of Plaintiff's arrest on his charges;
- m. In failing to ask for a change of venue after front page and television coverage and Plaintiff's request;

BY: 

Wm. Gary White, III

SWORN to before me this
14th day of February, 2011


Notary Public for South Carolina

My commission expires: March 9, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Clark D. Thomas,

Plaintiff,

vs.

Bolus & Bolus, Attorneys, Keith Bolus,
Officially, Michael T. Bolus, Officially and
Individually,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 10-CP-10-4820

**AFFIDAVIT OF
MICHAEL J. VIRZI**

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of the plaintiff, Clark D. Thomas, to support his Complaint against defendants Michael T. Bolus and Bolus & Bolus, Attorneys, for professional negligence.

2. My qualifications to give expert testimony include the following:

- A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice and legal ethics;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court and served for three years as Chairman of the South Carolina Bar Ethics Advisory Committee;
- C. I have authored two published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
- D. I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice and ethics, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and

MJV

E. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

3. My opinion is based on review of the following documents:

A. Complaint in the above-captioned case, with exhibits;

B. Affidavit of Wm. Gary White, III, in the above-captioned case, dated Feb. 14, 2011;

C. Brief of Clark David Thomas titled "Developed Case Record"; and

D. Transcript of Proceedings before The Honorable Deadra L. Jefferson in State of South Carolina vs. Clark David Thomas, Case Nos. 2006-GS-10-12295 & 12296 with exhibits.

4. These factual and legal materials are of the type reasonably relied upon by experts in the field of legal malpractice in forming their opinions.

5. Based on my experience, education, training, knowledge of the standard of care for lawyers, it is my opinion that the above-listed documents evidence acts and omissions by Defendants Michael T. Bolus and Bolus & Bolus Attorneys (hereinafter collectively "Bolus"), in their representation of Mr. Thomas, that breached their duties of competence, diligence, communication, and loyalty and fell below the standard of care for lawyers.

6. In particular, it appears Bolus represented Mr. Thomas in the trial of criminal charges against Mr. Thomas for kidnapping and criminal domestic violence of a high and aggravated nature ("CDVHAN"). The above-listed documents indicate that Bolus failed assert Mr. Thomas' Sixth Amendment rights at trial, failed to seek to have the charges dismissed based on the delay of the trial, and failed to otherwise preserve the issue for appeal. The standard of care for criminal defense lawyers includes pursuing all reasonable legal arguments that may result in dismissal of the charges and preserve for appeal all non-frivolous legal arguments that may result in reversal of a conviction,

MSV

and Mr. Thomas alleges that Bolus failed to do so. If true, those failures breached Bolus' duties of competence and diligence, fell below the standard of care for lawyers, and most probably undermined the strength of Mr. Thomas' grounds to appeal his convictions.

7. The documents further indicate that Bolus failed to object to or otherwise cure false statements made by the prosecuting attorney at Mr. Thomas' bond modification hearing, and again at sentencing, that Mr. Thomas had 44 prior convictions including 9 felonies when in fact he had only 32 prior convictions for non-violent offenses, not including any felonies. The standard of care for criminal defense lawyers includes making all reasonable efforts to minimize the client's jail time, including limiting, mitigating, or rehabilitating any aggravating factors presented at a bond hearing or sentencing, and Mr. Thomas alleges that Bolus failed to do so. If true, that failure breached Bolus' duties of competence and diligence and fell below the standard of care for lawyers.

8. The documents further indicate that Bolus failed to

- A. object to or seek to exclude evidence not disclosed prior to trial, including photographs and medical records, and failed to preserve the issue of their admissibility for appeal;
- B. review letters from Mr. Thomas' computer, which were introduced as evidence against Mr. Thomas at trial, prior to their admission and Bolus' witness examination regarding those letters, limiting Bolus' ability to rehabilitate harmful testimony based on those letters;
- C. subpoena witnesses whose testimony would have been favorable to Mr. Thomas, specifically two officers to whom the victim allegedly had stated her

MIV

love of being tased—a key factual basis of the defense at trial—and asked to be tased again by them; and

- D. interview or attempt to call at trial witnesses who appeared at trial to testify for Mr. Thomas and whose testimony would have been favorable to Mr. Thomas, specifically regarding the victim's stalking of Mr. Thomas.

The standard of care for criminal defense lawyers includes diligently investigating the facts, reviewing evidence, and interviewing potential witnesses, in order to present a convincing defense to the jury. In this case, the defense against the charges of CDVHAN and kidnapping was essentially that the victim consented to the acts Mr. Thomas committed. Her consent to being bound and tased would be shown through direct evidence of consent, prior consistent acts, or prior statements consistent with consent. Mr. Thomas alleges that Bolus failed to interview or obtain testimony from witnesses who could have made such a showing at trial and failed to review evidence that was first presented during trial, in order to mitigate or rehabilitate its harmful impact. If true, those failures breached Bolus' duties to Mr. Thomas of competence and diligence and fell below the standard of care for lawyers. The standard of care for criminal defense lawyers also includes efforts to exclude inculpatory evidence. The prosecution's failure to produce evidence to the defense prior to its use at trial provided grounds to attempt to exclude such evidence, and Mr. Thomas alleges that Bolus failed to make any attempt to exclude harmful evidence not produced prior to trial and failed to review such evidence with Mr. Thomas during recesses. If true, those failures breached Bolus' duties to Mr. Thomas of competence, diligence, and communication, fell below the standard of care for lawyers, and most probably contributed to absence of reasonable doubt in the minds of the jurors.

MTV

9. The documents further indicate that Bolus refused the trial judge's offer to charge the jury with CDV, lesser-included offense to CDVHAN. The standard of care for criminal defense lawyers includes making all reasonable efforts to minimize the client's jail time, including seeking lesser charges that are likely to result in shorter sentences, such as CDV relative to CDVHAN. Absent a reasonable expectation of acquittal on the CDVHAN charge, which is not indicated by the trial transcript, a jury charge of CDV could have benefitted Mr. Thomas, and Bolus' refusal of that charge breached his duty of competence and fell below the standard of care for lawyers.

10. The documents further indicate that Bolus generally refused to communicate with Mr. Thomas during recesses at trial and regarding such matters as the judge's offer of a CDV jury charge, opting instead to spend breaks reading an unrelated book rather than reviewing newly-received evidence and otherwise preparing for the remainder of the proceedings. If true, those actions breached Bolus' duty of communication and fell below the standard of care.

11. The documents further indicate that Bolus failed to inform the Department of Probation, Parole and Pardon Services of Mr. Thomas' arrest while on probation, despite being instructed to do so by Mr. Thomas, and resulting in additional incarceration for Mr. Thomas. The standard of care for lawyers would include such a simple notice if it would have benefitted the client, and Mr. Thomas alleges that Bolus failed to do so. If true, that failure breached Bolus' duties of competence and diligence and fell below the standard of care for lawyers.

12. Finally, the documents indicate that Bolus represented Mr. Thomas' ex-wife in a criminal matter, while she was pursuing charges against Mr. Thomas, and asserted that representation as a conflict prohibiting Bolus from assisting Mr. Thomas in getting out of jail before trial. The standard of care for lawyers includes avoiding conflicts of interest that limit the lawyer's

MTJ

ability to zealously and diligently pursue the client's interests, and Mr. Thomas alleges that Bolus' representation of Mr. Thomas' ex-wife created such a limitation. If true, that representation breached Bolus' duty of loyalty and fell below the standard of care for lawyers.

13. Mr. Thomas' conviction, the extent of his sentence, and the existence or strength of his grounds for appeal depend on the quantity and quality of evidence presented on his behalf and against him at trial and on the extent of the legal arguments presented to the circuit court and preserved for appeal. Thus the errors and omissions identified herein can reasonably be expected to adversely affect Mr. Thomas and, in total, most probably contributed to the guilty verdicts and the length of Mr. Thomas' sentences. As a result, it is my opinion that the above documents indicate conduct by Bolus that fell below the standard of care, competence, diligence, communication, and loyalty expected of lawyers.

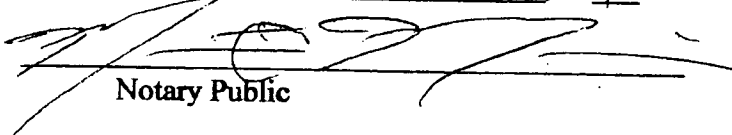
14. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.

State of South Carolina
County of Richland


Michael J. Virzi, Esq.

Sworn and subscribed before me
This 28th day of March, 2011


Notary Public

My Commission Expires : _____

My Commission Expires October 18, 2020

Appendix A

Materials Presented to the Trial Court by Clark D. Thomas as Exhibits to Filed Motions and Memoranda

Complaint, filed June 15, 2010

- Letter & Representation Agreement dated June 20, 2006 (marked as “Exhibit 9”)
- Affidavit of Kerri W. Davis (marked as “Exhibit 115”)

Reply to Bolus & Bolus Motion to Dismiss, filed August 12, 2010

- Six pictures and webpages related to existence of the Bolus & Bolus law firm (marked as “Exhibits A-F”)

Return to the Motion to Strike, filed March 29, 2011

- Letter from Tommy Bolus dated November 22, 2006 (marked as “Exhibit 34”).

Motion for Leave to Amend and Proposed Amended Complaint, filed April 1, 2011

- Letter & Representation Agreement dated June 20, 2006 (*duplicate* marked as “Exhibit 9”)
- Affidavit of William Gary White, III (marked as “Exhibit 149”)
- Affidavit of Michael J. Virzi (marked as “Exhibit 150”)
- Affidavit of Kerri W. Davis (*duplicate* marked as “Exhibit 107”)

Second Memorandum in Opposition to Motions to Dismiss, filed April 1, 2011

- Letter from Clark David Thomas dated November 14, 2006 (marked as “Exhibit 33”)
- Letter from Tommy Bolus dated November 22, 2006 (*duplicate* attached as “Exhibit 34”)
- Letter & Representation Agreement dated June 20, 2006 (*duplicate* marked as “Exhibit 9”)
- Affidavit of William Gary White, III (*duplicate* marked as “Exhibit 149”)
- Affidavit of Michael J. Virzi (*duplicate* marked as “Exhibit 150”)
- Motion to Produce, City of Summerville v. Davis (marked as “Exhibit 88-A”)
- Affidavit of Kerri W. Davis (*duplicate* marked as “Exhibit 107”)
- Affidavit of Carol Ann Cook (marked as “Exhibit 58”)
- Letter from Tommy Bolus dated August 1, 2008 (marked as “Exhibit 148”)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas,

Appellant,

V.

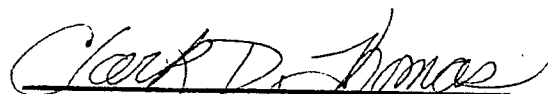
Bolus & Bolus,
Attorneys Keith Bolus, Officially,
Michael T. Bolus, Officially
and Individually,

Respondent.

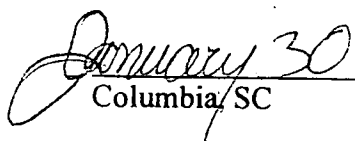
CERTIFICATE OF APPELLANT

Pursuant to Rule 210(g), SCACR: Clark D. Thomas, Appellant in the above captioned Appeal, hereby certifies that this *Record on Appeal* contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



Clark D. Thomas #187845
BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210

 January 30, 2012
Columbia, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas,

Appellant,

V.

Bolus & Bolus,
Attorneys Keith Bolus, Officially,
Michael T. Bolus, Officially
and Individually,

Respondent.

FINAL BRIEF OF APPELLANT

CLARK DAVID THOMAS
Appellant

BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210

Pro se Appellant

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- I. Did the court err in determining that the Respondents' conduct while representing Appellant in the underlying criminal matter could not have been determined within the ambit of common knowledge to have fallen below an acceptable standard of care in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution? 28 App. p. 226

- II. Did the court err in failing to grant Appellant leave to amend and supplement the pleadings and to file an amended complaint; and, in granting the Respondents' motion to strike the affidavit of William Gary White, III, in violation of Appellant's

right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution? 35 App. p. 233

III. Did the court err in granting the Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution? 41 App. p. 239

IV. Did the Respondents engage in deceptive trade practices; and, participate with their attorneys in a civil conspiracy by the subornation of perjury constituting extrinsic fraud and fraud upon the court in their denial to practicing law as Bolus & Bolus and the Bolus Law Firm? 43 App. p. 241

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STATEMENT OF ISSUES ON APPEAL

I.

Did the court err in determining that the Respondents' conduct while representing Appellant in the underlying criminal matter could not have been determined within the ambit of common knowledge to have fallen below an acceptable standard of care in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution?

II.

Did the court err in failing to grant Appellant leave to amend and supplement the pleadings and to file an amended complaint; and, in granting the Respondents' motion to strike the affidavit of William Gary White, III, in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution?

III.

Did the court err in granting the Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus in violation of Appellant's right to due process; equal protection of the law; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution?

IV.

Did the Respondents engage in deceptive trade practices; and, participate with their attorneys in a civil conspiracy by the subornation of perjury constituting extrinsic fraud and fraud upon the court in their denial to practicing law as Bolus & Bolus and the Bolus Law Firm?

STATEMENT OF THE CASE

This is an appeal from the circuit court's grant of dismissal to Respondents Michael Bolus, Keith Bolus, and Bolus & Bolus; and, striking the affidavit of William Gary White, III, on April 19, 2011. (R. p. 4—Order). In June of 2006, Appellant Clark D. Thomas was charged with kidnapping, criminal domestic violence of a high and aggravated nature (CDVHAN) and, sexual battery on spouse—which was elevated to first degree criminal sexual conduct (CSC-1st) in February of 2007. Thomas' mother, Carol Ann Cook, arranged for Michael Bolus to represent him in this underlying criminal matter. Thomas went to trial in July of 2008: he was found guilty of kidnapping and CDVHAN, and was sentenced to an aggregate term of 20 years.

This civil action was commenced when Thomas filed a Summons and Complaint in the Charleston County Court of Common Pleas on June 15, 2010: alleging a breach of fiduciary duty; breach of contract; and, legal malpractice against Respondents Michael Bolus, Keith Bolus, and Bolus & Bolus—arising from Michael Bolus' representation of Thomas in the underlying criminal matter. (R. pp. 6-12—Complaint). The Respondents filed their Answer and motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus on July 12, 2010: grounded on Thomas' failure to, *inter alia*, file the affidavit of an expert witness as part of the Complaint; Thomas' alleged failure to state a claim or cause of action; and, Thomas' failure to allege his innocence. (R. pp. 13-26; p. 27; pp. 32-33—Answers / Motions to Dismiss).

Thomas latterly filed the affidavit of expert witness, Attorney William Gary White, III, on February 16, 2011: the Respondents replied with a motion to strike Attorney White's expert affidavit on March 16, 2011. (R. pp. 181-182; pp. 59-79—Affidavit / Motion to Strike). Thomas then filed a motion for leave to amend and supplement the pleadings and to file an *Amended Complaint* with the attached affidavit of expert witness, Attorney Michael J. Virzi on

April 1, 2011. (R. pp. 98-100; 183-188—Affidavits / Motion to Amend). Oral arguments were heard on April 6, 2011: during which, Thomas confirmed that Judge Kristi Harrington would review all of the pleadings prior to rendering her decision.

Judge Harrington granted the Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus; and, the Respondents' motion to strike the affidavit of Attorney William Gary White, III, on April 18, 2011, and filed with the Clerk of Court on April 19, 2011. Judge Harrington did not rule on Thomas' motion to amend the pleadings and file an *Amended Complaint*. Thomas then timely filed a motion to alter or amend a judgment on April 29, 2011: seeking specific findings of fact and conclusions of law on, among other issues, the following documents. (R. pp. 109-119—Motion to Reconsider):

- 1) *Complaint*;
- 2) *Reply to Defendant's Motion to Dismiss Michael Bolus*;
- 3) *Reply to Defendant's [Michael Bolus] Motion to Dismiss Bolus & Bolus*;
- 4) *Reply to Defendant's [Keith Bolus] Motion to Dismiss Bolus & Bolus*;
- 5) *Reply to Defendant's Motion to Dismiss Keith Bolus*;
- 6) *Return to Motion to Strike Affidavit of William Gary White, III*;
- 7) *Memorandum Opposing Motion to Dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus*; and,
- 8) *Motion for leave to Amend and Supplement the Pleadings and to file an Amended Complaint*.

On June 1, 2011: Thomas received Judge Harrington's *Order* denying his *Motion to Alter or Amend a Judgment to Include Specific Findings of Fact and Conclusions of Law*. (R. p. 5—Order). This appeal was timely filed on June 22, 2011.

FACTS

The Genesis of this Action

This case is the result of the Respondents' gross and imputed negligence during the course of their duty to prove Thomas' innocence of the false allegations made against him by his wife, Rachel Crowley, after he informed her that he was seeking a divorce: Rachel is the alleged victim in the underlying criminal matter. The Respondents' failure to present the facts during Thomas' trial that would have proven that he is not guilty of kidnapping and CDVHAN is the only reason that Thomas was convicted and, sentenced to 20 years in prison. The Respondents' malfeasance, misfeasance, and nonfeasance also led to the violation of Thomas' Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights as guaranteed by the United States Constitution.

Thomas was introduced to Rachel at a mutual friend's house: compelled by his fear of aging, Thomas imprudently embraced a relationship with Rachel and eventually married her—even though he was aware of her bipolar disorder. Thomas' insecurity also induced him to endure her abusive demeanor and, engage in unusual sexual activities in his efforts to please her. This sexually bizarre behavior included the use of a stun gun; being whipped; biting; clawing, and slapping: Rachel also wanted to be choked during sex, but Thomas refused to participate in this act. Other unusual activities involved tying each other to the bed with silk neckties: a *Photograph* depicting Rachel nude and, tied to a bed with silk neckties—marked as *Exhibit 70-A*—is available; however, it is not cited because it was not presented to the lower court. Michael was enlightened to the existence of this photograph, but he did not seek to present it during trial.

The Respondents' Advertising

The Respondents Michael Bolus, Keith Bolus, and *Bolus & Bolus* maintain a shingle in front of their primary place of business—located at 2127 Dorchester Road, North Charleston, SC—identifying the *Law Offices* of *M. Tommy Bolus* and *D. Keith Bolus* with the phone number 747-1323. (R. p. 161, p. 10, photos 2; 3; and, 6—Exhibit A). Another sign on the front of the building expresses that these are the *Bolus Law Offices* of *D. Keith Bolus & Tommy Bolus*: the phone numbers displayed on this sign are 747-1323; and, 588-6000 that is assigned to the Respondents' ancillary office. (R. p. 161, photo 7—Exhibit A)—located at 23 ½ Center Street, Folly Beach, SC. This site has a sign over the entrance that pinpoints the *Bolus Law Offices*. (R. p. 161, photo 4—Exhibit A): a sign to the right of the ingress at this location reveals that the attorneys are *D. Keith Bolus & M. Tommy Bolus*. (R. p. 161, photos 3-6—Exhibit A)—please note the ubiquitous *ampersand*; and, the absence of a disclaimer to the distinction that these attorneys practice law independently. (R. p. 161, photos 1-8—Exhibit A).

An internet search conducted after the Respondent's filed their motions seeking dismissal of this action divulged four websites advertising the legal services of *Bolus & Bolus—Attorneys at Law*. The first of which depicts a logo embracing the slogan *We're here to help... that's a promise*: therein the description of services provided by this purported partnership is the enticing availability of *Over 50 Years of Combined Experience*. (R. p. 162—Exhibit B); however, an updated search reveals that this promotional advantage is no longer displayed. The Respondents also presently maintain a website that as recently as June 29, 2011: is accessed by the link *Boluslawfirm. Com*. (R. p. 170—Exhibit F). Contrary to every other mode the Respondents have used to seek public awareness, their exclusive domain does express that Michael and Keith Bolus work independently: also unprecedented is the phone number 693-7189 for a direct connection to

Keith Bolus; and, 696-1651 to reach Michael Bolus. When Thomas filed the *Complaint* in this matter, it never occurred to him that the Respondents would deny what they have advertised for years: that they practice law as *Bolus & Bolus*; or, the *Bolus Law Firm*.

Because of this bizarre contradiction therein the Respondents' *Answers* and *Motions to Dismiss*, Thomas asked his mother to explore the Internet websites that they have implemented to promote their law firm; and, to procure pictures of the signs in front of the Respondents' offices to confirm their publicized operational status. In light of these facts and that Thomas sought this evidence after the Respondents answered the *Complaint*, he cannot verify if their website at *Boluslawfirm.com* carried a disclaimer of autonomy prior to filing this lawsuit: although, the failure to express this claim in all the other websites seems to suggest that it did not.

Prior Representation

During the course of oral arguments heard on April 6, 2011: Thomas stated that Respondent Keith Bolus was not directly involved with the underlying criminal matter; however, Thomas did disclose that he retained Keith the first time he sought legal counsel from *Bolus & Bolus*, and that Keith defended him against misdemeanor charges involving his business checking account—during which, Thomas had assumed the alias of George Keith Nichols. Prior to pleading guilty to these charges in August of 1992, Thomas informed Keith of his wish to resume his real name: Keith told him that the judge may react unfavorably if enlightened to this conflict in names and, he advised Thomas to remain under the alias of George Nichols. Thomas followed Keith's advice and was sent to prison as George Keith Nichols. Thomas made many attempts to take back his true identity while incarcerated: but the South Carolina Department of

Corrections (SCDC) refused to acknowledge his birth name. After he was released four months later in December of 1992, Thomas never misrepresented himself again.

Thomas contends that he met Respondent Michael Bolus when he returned to *Bolus & Bolus* seeking representation in another unrelated matter. Thomas logically presumed that in light of the signs on the building designating the *Bolus Law Offices*, he could continue to depend on Keith to assist Michael in the event that he is unable to fulfill his duty: which is the security that Thomas sought and, believed that he was entitled to each time he signed a contract with Michael—to enjoy *Over 50 years of combined experience*.

When Michael was retained in the underlying criminal matter, Thomas told him of his intent to have a trial by jury and, informed him of material witnesses: be that as it may, Michael urged Thomas to allow him to negotiate a plea bargain; but Thomas maintained his innocence, and determination to have a trial by jury. After Michael left, Thomas called his mother, Carol Ann Cook, to request that she fire him. (R. p. 175, lines 2-3—Exhibit 58). A distinct effort was later made to release Michael, but he refused to refund any of the retainer and Thomas was financially incapable of hiring another attorney otherwise. (R. pp. 172-174—Exhibit 34). Carol Ann was subpoenaed to testify during the oral arguments heard on April 6, 2011: however, Judge Harrington sustained the Respondents' objection to her testimony. (R. p. 142, lines 16-25).

On or about the date of July 12, 2006: Thomas directed Michael to file a motion for a speedy trial. Michael tried to persuade Thomas to withdraw this request, and accept a plea bargain. When Thomas refused, Michael called Carol Ann and told her that if Thomas did not agree to plead guilty, he would be sentenced to between 40 and 50 years in prison; and, suggested that she persuade Thomas to change his mind. (R. p. 176, lines 5-6—Exhibit 58). On

September 08, 2006, Michael reluctantly filed a motion for a speedy trial on the charges of kidnapping, CDVHAN, and sexual battery on spouse.

On February 09, 2007: a hearing was held before Judge R. Markley Dennis. The alleged victim Rachel Crowley—whom is Thomas' legal wife—sent intermediaries to this hearing to convey her refusal to testify against Thomas: consequently, he was released from jail on March 02, 2007, on a PR bond with satellite monitoring. Within a couple of weeks following Thomas' release, Rachel began stalking him by way of phone calls, text messages, and voicemails. Thomas displayed these text messages to Teddy and Krystal Martin and, played the voicemails in their presence. In these messages, Rachel expressed her despair for wont of Thomas' arms around her when she slept; and, that she was unable to rest because of her desperate need for him.

During the month of January in 2008: Rachel pursued Thomas in a restaurant where he was having lunch with Teddy and Krystal. In the course of this confrontation, Thomas avoided Rachel's attempt to embrace him: in the Martin's presence, Thomas immediately called the firm that tracked his satellite monitor—Alternative Incarceration Methods (AIM). Because AIM was not alerted to Thomas' close proximity to Rachel during this incident, it was clear that she was not carrying the pager assigned to Thomas' satellite monitor: unambiguously confirming that she was not in fear for her life. A *Correspondence* from AIM—marked as *Exhibit 98*—confirming this incident is available; however, it is not cited because it was not presented to the lower court. The Martins were subpoenaed to testify during the oral arguments heard on April 6, 2011: but Judge Harrington sustained the Respondents' objection to their testimony. (R. p. 142, lines 16-25).

When Thomas was reporting the incident in the restaurant with Rachel to AIM, he also expressed his frustration at having already spent \$4500.00 to ensure that he did not approach the woman whom was stalking him: AIM advised Thomas to move the court to drop the monitoring condition of his bond. During this subsequent *Motion* hearing, the prosecutor Nathan Williams told the Court that Rachel was ready to testify against Thomas—yet, she did not appear at this hearing either; and, that Thomas had 9 felonies and 44 convictions. Michael did not reveal that Rachel had been stalking Thomas: nor did he seek the Martin's testimony or, even explain to the Court that Thomas did not have 44 convictions, or any felonies—the motion to remove the satellite monitoring was obviously denied.

On June 05, 2008: Thomas was charged with aiding and abetting prostitution—this charge was dismissed on July 15, 2008. Prior to this allegation being made against Thomas, Rachel refused to testify against him; and, she was so determined to reunite with Thomas that she began stalking him. Be that as it may and within 32 days of this arrest, a trial that had been delayed for over two years for lack of a prosecuting witness was suddenly convened—suggesting that Rachel believed that her husband Thomas had turned his back on her because he preferred the companionship of whores.

This trial presented Rachel with the golden opportunity to commit perjury with apparent impunity to still her jealous rage: Thomas has recorded phone calls with Rachel, wherein, she is screaming hysterically in the venting of this seething jealousy. During pretrial motions, Michael did not expose any of these facts or, assert Thomas' right to a speedy trial; and, he once again allowed Nathan to interject the false statement that Thomas had 9 Felonies and 44 convictions. The *Uniform Traffic Ticket* for aiding and abetting prostitution, and the *Release/Dismissal*—marked as *Exhibit 51-A* and *Exhibit 82-A* respectively; and, a *Compact Disk* of these phone calls

with binding case law confirming its admissibility—marked as *Exhibit 143*—in this matter are available; however, they were not cited because they were not presented to the lower court.

Injury Allegations

There were no allegations made that Thomas had struck Rachel with his hands or fists in the incident report. However, within Rachel's next three interviews and her trial testimony, these accusations surfaced and became significantly more aggressive and violent in each alleged account: after Rachel's first interview with Officer Chris Talbott (NCPD), she told Detective James Rowan that Thomas punched her in the side now and then. Some ten days later, Rachel then alleged that Thomas punched her in the ribs and, slapped her in the face several times: she later claimed that Thomas violently hit her in the face throughout the night.

During testimony, Rachel alleges that she suffered from broken teeth when Thomas allegedly attacked her and, that he *hit her between the legs a lot*. There have never been any dental records provided to establish that her teeth had ever been cracked or repaired and, there were no medical records or photographs to support Rachel's claim to having been struck repeatedly between her legs. Rachel also asserted that while riding in Thomas' van, that her lip was lacerated when he allegedly punched her in the face. In addition to these false claims of physical injuries, Rachel alleges during her trial testimony that she was currently receiving mental health counseling.

Pictures covering most of Rachel's body with the clarity to reveal details as diminutive as smudges on her face—taken to illustrate marks allegedly caused by a stun gun—were entered as state's exhibits 17, 18, 23, 24, 25, and 26: during testimony from Rachel describing every blemish on her body revealed in these images, there were no references made to busted lips or

bruising—to support her claim of having been brutally beaten for at least 24 hours. Furthermore, the emergency room doctor’s testimony did not carry the observation of contusions or lacerations consistent with Rachel’s allegations.

Other exhibits entered into evidence during trial that also appeared to arouse the jury’s emotions to the point that all calm and logical reasoning was abandoned—that Thomas did not even know existed—were articles of clothing marked as state’s exhibits 1: additional evidence that Thomas was ambushed with were letters downloaded from a computer that had been stolen from him two years prior, (R. pp. 175-176, line 4—Exhibit 58)—that were marked as state’s exhibits 41-45; and, the medical records and photographs that were presented during trial. Michael failed to inspect or, obtain copies of these or any other of the trial exhibits.

Conflict of Interest

Immediately following Thomas’ arrest in the underlying criminal matter, Michael conducted an interview with Thomas’ ex-wife, Kerri Davis and, their daughter, Christen Thomas Boyer. (R. p. 160, line 7—Exhibit 107). During the course of this meeting, Christen informed Michael about numerous violent rages that she had witnessed Rachel engage in: Christen then began playing the recorded phone conversations between Thomas and Rachel, wherein, Rachel is screaming obscenities at Thomas and, can also be heard destroying objects in the background. Rachael’s jealous rage that had been captured in these recordings would have supported Thomas’

claim that the only offense that Rachel had fallen victim to was her belief that her husband had been consorting with whores and, the vehement nature of Rachel's proclivity to verbally abuse Thomas; and, her destructive disposition also stored therein would have corroborated an essential element of the defense that Thomas wished to present by vividly demonstrating Rachel's bipolar disorder. Be that as it may, Michael instructed Christen to turn off the recorder and said there was nothing that he could do to help Thomas.

In light of Michael's disinterest in evidence that was material to Thomas' defense, it appears that Michael's curiosity is what compelled him to visit Kerri: as opposed to finding a defense strategy, Michael told Thomas that he found Kerri to be very attractive. Michael's ostensible investigation of facts to support Thomas' defense started and ended that day: indicating that there was never a meaningful attempt made to reveal the copious availability of cogent, exculpatory facts that could have been developed into a clear and convincing defense and, trial strategy. Christen was subpoenaed to testify during the oral arguments heard on April 6, 2011: but Judge Harrington sustained the Respondents' objection to her testimony. (R. p. 142, lines 16-25).

Kerri was later arrested for driving under the influence, and she informed Thomas of her ambition to retain Michael to represent her in this matter. Thomas immediately contacted Michael's office to inform them about a bench warrant that Kerri had initiated against him seeking \$1800.00 in disputed child support obligations. (R. p. 160, line 8-9—Exhibit 107). Michael accepted her case anyway; seemingly undeterred by this unmistakable conflict of

interest. (R. pp. 179-180—Exhibit 88-A). When Thomas was arrested for allegedly fraternizing with a prostitute on June 5, 2008: Kerri's bench warrant was served on him—forestalling Thomas' release from jail. When Carol Ann asked Michael to help get Thomas out of jail, he informed her that there was a conflict of interest, because, he was representing Kerri; and, he refused to help Thomas, (R. p. 176, line 10—Exhibit 58): thereby, failing to honor his obligations to Thomas—whom retained Michael first; and, indicating his loyalty to Kerri. Thomas was left with no alternative other than paying the disputed \$1800.00 that he did not have to get out of jail: Thomas was subsequently sentenced to 120-days in jail.

Exculpatory Facts

Rachel's documented history of criminal behavior began on October 15, 2005: when she was arrested for malicious injury to real property while attempting to steal money out of a vending machine. The arresting officer also discovered 27 one dollar bills inside the car that Rachel was in: the incident report reveals his belief that Rachel had damaged other vending machines and, had successfully stolen money that was unreported at that time. Five months later, Rachel was arrested for assaulting Thomas' daughter: Christen testified to her observations of Rachel as she had just concluded a call with an unknown man and, suddenly threw a fruit bowl across the room; then, proceeded to the bathroom where she ripped down the shower curtains. From there, Christen said that Rachel went to the bedroom she shared with Thomas and smashed the TV on the floor; and, then breaking everything in sight before running out of the house.

Christen said that she then locked the door and called 911 and, that while she was on the phone speaking to the Folly Beach dispatcher, Rachel broke out a window with her fist and reached in to unlock the door—this act resulted in free-bleeding cuts on Rachel's hands; and, that Rachel then jumped on her boyfriend's back and bit him. When the police arrived, Rachel began cussing the officers and slinging blood around as she tried to put her hands on them; and, that after these officers used a taser to subdue her, Rachel began laughing and said that she liked it and, asked them to tase her again—Rachel was then placed into the police cruiser where she began spitting, and attempted to kick out the passenger window.

During another of Rachel's uncontrollable rages, Thomas had to call Rachel's mother, Cathy, and step-father Cecil to come and get her: upon their arrival, Rachel struck Thomas about the head with a closed fist. Rachel was later arrested on May 12, 2005: after the arresting officer watched her take a swing at Cecil with *a closed fist*. Seven months later on December 7, 2007: Rachel was taken into custody for disorderly conduct because she was being loud and boisterous and, using profane language in public. Three months after that on March 3, 2008: Rachel was arrested for disorderly conduct; resisting arrest; and, assault on police after she was observed fighting; damaging personal property; and, throwing beer bottles. The *Incident Reports* from these arrests—marked as *Exhibits 91; 144; 145; 146; and, 151* respectively—are available; however, they are not cited because these matters were not presented to the lower court.

While Rachel denies that she is bipolar, there was clear evidence presented during trial in support of this opinion: it was revealed that when Rachel was traveling back from Columbia to

Charleston with Thomas and Christen—whom was ten years old at the time—Rachel was behaving normally when she suddenly became irate and grabbed the steering wheel in an attempt to slam the car into the concrete divider while traveling at a 70 miles per hour. Without provocation and for no apparent reason, Rachel had attempted to kill them all without compunction. Christen has witnessed Rachel's behavior during many other moments like this where she would indulge in self-mutilation; tear her own and Thomas' clothes to shreds; and, demolish everything within her reach.

When Thomas' resolve was to divorce Rachel, she responded with a hopelessness that compelled her to ask Thomas if he would attend her funeral—which Rachel expressed in her constant phone calls to him. Because of Rachel's desperation, Thomas agreed to reunite with her. Soon after reconciling, Thomas and Rachel were evicted from their Folly Beach home because of the incident involving Rachel's assault on Christen; and, Thomas discovered that Rachel had been having sex with other men again. When Thomas told Rachel that he was ending their relationship, she became hysterical and leaped from his van while still in motion.

At this moment, Rachel began making conflicting claims of having been abducted, raped, and tortured; and, by using the court as an instrument of war, Rachel lied over 46 times during her quest for revenge. Detective Rowan even remarked during his trial testimony that *if those things really happened, she was more calm probably than [he] would have been able to be in her circumstance*. The gravity of this observation speaks volumes because it comes from a man whom was once a paramedic; counselor for assault victims; and, a seasoned police detective. It is hard to imagine the tragedies that this man has witnessed in these capacities.

Thomas' Trial

On July 07, 2008: Thomas was transported to the Charleston County Courthouse where he thought the bench warrant initiated by Kerri was going to be rescinded. Upon Thomas' entry to the courtroom, Michael apprised him that they were picking a jury for trial. Thomas immediately instructed Michael to request a continuance for time to discuss trial tactics and defense alternatives: Michael said that there would be no request for a continuance; and, he made it clear that he would not be preparing Thomas' defense when he asked the Court if there would be a problem with him making a little money while waiting for trial to begin. During pretrial motions Michael was provided with a copy of state's exhibits 41-45: this evidence had been downloaded from Thomas' stolen computer in the form of a journal and four letters; however, Michael said that he did not intend to waste his time reading these documents and gave them to Thomas.

On June 23, 2008: Thomas had been placed in the administrative segregation unit while in the custody of the CCDC. During Thomas' term of segregation, there were no razors provided for shaves or haircuts given; and, showers were only furnished on Monday, Wednesday, and Friday mornings. Thomas was transported to the courthouse every morning—prior to the provision of showers—beginning July 07, 2008: Monday; through July 10, 2008, Thursday. Thomas brought the matter of his appearance to the Court's attention, and arrangements were alleged to have been made for him to shave. When Thomas was returned to CCDC that day, he was only provided hair clippers: Thomas was also allowed to take a shower; however, he was forced to wear the same jail uniform he had already worn for a week that was severely mildewed and, caused Thomas to smell offensively. Thomas was not allowed to take another shower; or, clip the hair on his face again that week.

Thomas' daughter inadvertently brought him a shirt that was several sizes too large, and slacks that were too tight to fasten: Thomas also did not have a belt for his waist and, had to wear white athletic socks with black shoes. On July 09, 2008, Thomas gave a note to Michael listing all the sizes necessary to purchase a suit with all the accouterments: Michael gave this note to Carol Ann Cook in order that she could bring this ensemble and, an electric razor the following day. This note—marked as *Exhibit 70-A*—is available; however, it is not cited because it was not presented to the lower court. Michael was the only person that was authorized to take Thomas' new clothes to him, but he arrived the moment trial resumed the next day—indicating that he was indifferent to whether or not Thomas was properly attired. (R. p. 177, line 14—Exhibit 58).

During his trial on July 10, 2008: Thomas instructed Michael to ask Judge Jefferson for time to change into his new suit and, for an opportunity to shave: Michael's reaction was to, twice, apprise the Court that he was tired of hearing about a shave. Thomas was forced to wear the same ill-fitting and mismatched clothing; and, in dire need of a shave, shower, and haircut for three consecutive days: which could have been avoided had Michael performed his duty to Thomas as opposed to leaving him in jail because of his loyalty to Thomas' ex-wife—because he found her attractive. Prior to sentencing, even Michael remarked that Thomas looked like a mess. Cynthia Gordon—whom also observed Thomas' appearance—was subpoenaed to testify during the oral arguments heard on April 6, 2011: however, Judge Harrington sustained the Respondents' objection to her testimony. (R. p. 142, lines 16-25).

Thomas tried to enlighten Michael with the details revealed herein: however, Michael remained evasive by avoiding Thomas' phone calls and, he ignored Thomas' voicemail

messages asking him to return his calls—intransigently expecting Thomas to plead guilty. Be that as it may and contrary to Rachel's varying versions of her specious recount, Thomas' veritable explanation of what transpired remains to be consistent: which is supported by myriad documents; facts that could easily have been corroborated by several police officers; and, the material witnesses that came to Thomas' trial for the purpose of testifying—including Teddy and Krystal Martin, whom appeared with the intent to testify to Rachel stalking Thomas. Michael was also informed that Thomas' satellite monitoring company *AIM* had documented this stalking; however, Michael told the Martins that they could leave; and, he declined to seek *AIM's* testimony despite Thomas' wishes. (R. pp. 176-177, line 12—Exhibit 58).

In addition, Thomas instructed Michael to subpoena three Folly Beach police officers that had arrested Rachel for assaulting his daughter Christen: their testimony was needed to corroborate that Rachel had enjoyed being tased during this arrest; and, to confirm the intensity of her rage and other relevant details. The authentication of these facts would have supported two vital elements of Thomas' well-grounded defense: that Rachel was consensually tased by him on the day in question; and, that Rachel is disposed to bouts of uncontrollable rage. Michael told Thomas this proof was irrelevant and, refused to subpoena these police officers; and, Michael denied Carol Ann Cook and Cynthia Gordon an opportunity to provide mitigating testimony. (R. pp. 176-177, line 12—Exhibit 58). Michael also ignored a notably persuasive character reference in support of Thomas that Attorney Jack Swerling had mailed to Michael's office. Swerling's *Character Reference*—marked as *Exhibit 138*—is available; however, it is not cited because it was not presented to the lower court.

The Trial

Michael's only pretrial motion was a request to accelerate Thomas' trial in order that he could enjoy his *protected day*: which appears to have been scheduled to ensure a timely departure for Costa Rica, because, Michael expressed concern to Carol Ann Cook, Cynthia Gordon and, Teddy and Krystal Martin that his vacation plans would be ruined if Thomas did not plead guilty and his trial lasted too long. (R. p. 176, line 8; p. 177, line 13—Exhibit 58). In a final attempt to pressure Thomas into pleading guilty, Michael informed him that he had arranged a plea bargain to ten years in prison and, he assured Thomas that he would be sentenced to 30 years if he did not accept this offer. It was later revealed that Michael was lying when Nathan informed the Court that he was seeking 30 years: whether Thomas was convicted by plea or, at trial. (R. p. 176, line 6—Exhibit 58).

Rachel Crowley's Contradictive Testimony

Because this Court denied Thomas' motion to exceed the 50 page limit of this brief, nine pages of text explicitly detailing over 46 of Rachel's conflicting and contradictive allegations had to be removed: however, a cursory glance at the various versions of Rachel's claims that are recorded in the incident report; the *Consent to Search Premises*; her statement to Detective Rowan and his affidavit; and, her affidavit reveal that as opposed to accurately counting Rachel's lies, it would be more challenging to distinguish a hint of consistency between them. Disturbingly, it appears that Michael did not know about the contents of these sworn statements as evidenced through his only objective throughout the entire trial: merely to establish that Thomas and Rachel were living together.

Christen Thomas Boyer's Testimony

Christen told the jury about the incident where Rachel assaulted her; bit her boyfriend; broke out windows; and, destroyed the contents of their beach house: this occurrence was recorded by the Folly Beach Public Safety Department on March 02, 2006. However, the use of a taser to subdue Rachel in the course of her arrest was redacted from this report. Since Rachel alleged that she was tortured with a taser against her will and, implicitly suggested that she had never experienced the effects of a stun gun or taser before: testimony from the arresting officers was materially essential. There were also two other eye-witnesses to Rachel's arrest that were not related to Thomas: both of these witnesses had also seen the stun gun that Thomas and Rachel had at their beach house, yet Michael only chose Thomas' daughter to reveal these details. Because of this irrational decision, the jury likely determined that Christen's loyalty to her father had influenced her testimony: which is exactly what Nathan insinuated.

Michael did not present a defense to the CDVHAN or, the kidnapping allegation. Michael also did not try to conceal his detachment from his duty to defend Thomas: during trial recesses, he even resorted to reading a book based on Ben Franklin to allay his boredom. At the conclusion of the state's case there was a two hour recess: during this break, Thomas asked Michael for instruction on testifying—which he refused to do. Michael then resumed reading his book and, ignored Thomas' questions. (R. p. 177, line 15—Exhibit 58).

While Thomas was under cross-examination, Nathan repetitively asked the same two questions through 19 pages of trial transcript. Nathan then proceeded to enter the journal and letters downloaded from the computer stolen from Thomas; Michael did not object to this inadmissible evidence. By manipulating fragments of these otherwise exculpatory documents to create syntactic, contextual, and semantic ambiguity: Nathan fabricated misleading and

inculpatory evidence. Because Michael had refused to read these letters or discuss their content with Thomas, it was impossible for him to reveal the actual matter within these letters or, to express the authentic spirit in which they were written. Even more alarming is that Michael dismissed any redirect-testimony from Thomas.

During Nathan's closing argument, he told the jury that Michael did not dispute a single detail of Rachel's allegations or testimony because everything she said was consistent and, that Rachel has been consistent from the start. Nathan also insisted that the jury could believe Rachel because she had come to trial and told them the truth; and, that Thomas had treated Rachel in a way that he wouldn't even treat a dog. Michael did not contradict these preposterous statements or, object when Nathan set forth his personal opinions and assurances as evidence to Rachel's truthfulness and alleged mistreatment. The jury obviously observed Michael's unwillingness to protest these arguments as his tacit affirmation of the veracity of Rachel's erratic story and, that Rachel was indeed a victim of the alleged horrific abuse.

During the charge conference, Michael refused to accept the trial judge's offer to charge the jury on the lesser included offense of CDV. Attorney Michael Virzi explained to Thomas that in a case, wherein, counsel believes that his client will not be found guilty: declining a lesser included offense would be regarded as a sound trial strategy, because, the willingness to acknowledge any guilt whatsoever is to suggest culpability—thereby, jeopardizing the likelihood of acquittal. In the underlying criminal matter, however, the courtroom's atmosphere was charged with the certainty that Thomas would be found guilty on the alleged kidnapping and CDVHAN charges: a significantly contributory factor to this ambiance is that during the course of this three day trial, Michael made a total of ten desultory objections.

During sentencing, Michael said that he was not going to contest the jury verdict: Michael also did not request any jail-time credit for the 16 months that Thomas spent on satellite monitoring at a cost of \$7,500.00; ensure that Thomas would not be required to register as a sex offender because of the lack of a sexual misconduct element within the erroneous kidnapping allegation or, move the Court to reconsider. Thomas maintained his innocence to the conclusion of his trial and continues to do so.

Synopsis

Michael expressed discontent with the retainer that he had accepted to provide Thomas with a defense, (R. pp. 172-174—Exhibit 34); and, despite Thomas' demand for a trial by jury, Michael relentlessly pressured him to plead guilty. (R. p. 176, line 8—Exhibit 58). These facts suggest that Michael set his fee based on the presumption that he could persuade Thomas to retract his claim of innocence. Moreover, Michael's Costa Rican vacation and his concern that Thomas' trial threatened his itinerary were no secret. (R. p. 177, line 13—Exhibit 58). The presentation of Thomas' defense began on July 10, 2008, at 11:50 a.m.: trial would have to be concluded within a few short hours, otherwise, the plans that Michael made for the following day to prepare to embark for Costa Rica would be lost—which is why Michael's only pretrial concern was to secure his *protected day*.

The foresight of refusing to present five of Thomas' material witnesses; and, declining to express the first objection during Thomas' entire defense, essentially, enabled Michael's likely objective to develop into a viable endeavor: because it was 1 hour and 25 minutes after starting that Michael rested the defense. From the moment the jury retired, they returned with a verdict 42 minutes later: by implying that Thomas was guilty, Michael successfully influenced the jury

to reach this verdict with the miraculous brevity of 30 minutes; and, he embraced a timely departure to Costa Rica.

Oral Arguments

In the instant matter, Thomas asked if all of his responsive pleadings would be considered before rendering a decision: because of Thomas' inexperience, he confirmed this review seeking to avoid belaboring the Court with a verbatim reading of these documents, while, retaining the arguments therein, (R. p. 135, lines 3-21); and, throughout the course of these oral arguments, Thomas attempted to persuade the Court to hear his *Motion for Leave to Amend and Supplement the Pleadings and to File an Amended Complaint* to remedy the deficiencies in his Complaint. (R. p. 125, lines 22-25—p. 126, lines 1-6; p. 134, lines 20-23; p. 135, lines 3-17; p. 136, lines 3-5; p. 139, lines 16-19; p. 144, lines 2-6). Thomas then made another motion to preserve all matters currently before the Court on the grounds that he has cured all of the defects in his *Complaint*; and, asked that if the Court were to rule in favor of the Respondents, that this case be dismissed without prejudice and, the statute of limitations tolled in order that Thomas could file the *Amended Complaint*. Thomas also expressed his intent to appeal an unfavorable decision. (R. p. 152, lines 25—p. 153, line 1).

STANDARD OF REVIEW

The United States Supreme Court has consistently held that they “[d]o not impose on persons unlearned in the law the same high standards of the legal art that they might place on the members of the legal profession.” Pollard v. United States, 352 U.S. 354, 363 (1957). Pro se litigants are held “to less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 523 (1972). “As a pro se litigant, the Plaintiff’s pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007); Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978).

“The privileges and immunities of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” South Carolina Constitution, Article I, § 3; and, the Fourteenth Amendment to the United States Constitution. The right of appeal is not beyond the reach of constitutional protection. Where a right of appeal is granted, due process and equal protection of the laws must be afforded. State v. Lagerquist, 176 S.E.2d 141 (S.C. 1970).

The court in Anonymous v. State Bd. Of Med. Examiners, 473 S.E.2d 870, 872 (S.C. App. 1996) (quoting Black’s Law Dictionary 501 (6th Edition 1990)), held that “[d]ue process encompasses ‘[a]ll rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice and includes procedural ... rights of citizens against government actions that threaten the denial of life, liberty, or property.’” “The Fourteenth Amendment articulates a prohibition against any state deprivation of life, liberty, or

property without due process of law. The rule is enunciated in Ingram v. Wright, 430 U.S. 651 (1977).” *Id.* at 873.

“All courts shall be public, and every person shall have speedy remedy for wrongs sustained.” S.C. Const Art I, § 9. “The guaranty in this section of a speedy remedy for wrongs sustained has no application to criminal prosecution. *Lagerquist, id.* The application of this section to civil remedies only is clear when reference is made to former SC Const, Art I, § 18.” “The right of trial by jury shall be preserved inviolate.” S.C. Const Art I § 25. This section applies to civil and criminal cases. Best v. Barnwell County, 103 S.E. 479 (S.C. 1920); Cf. “C.W. Mathews Contracting Company v. S.C. Tax Comm., 230 S.E.2d 223 (S.C. 1976). Each party is entitled to jury trial in action at law. Singleton v. Collins, 161 S.E.2d 246 (S.C. 1968). Action for damages for breach of contract is action at law, and either party has right to trial by jury. Airfare, Inc. V. Greenville Airport Comm., 153 S.E.2d 846 (S.C. 1967).

A *Demurrer*, according to Black’s Law Dictionary, 498 (9th Ed. 2009) is *now termed a motion to dismiss*. “In passing on demurrer, complaint’s allegations are deemed true and are liberally construed in favor of pleader.” Hill v. Watford, 278 S.E.2d 347-348 (S.C. 1981); Crowley v. Bob Jones University, 234 S.E.2d 879 (S.C. 1977); Piedmont Fire Ins. Co. v. Burlington Truckers, 32 S.E.2d 755, 756 (S.C. 1945). “Should the four corners of pleading embrace sufficient allegations to state a cause of action, the demurrer is properly overruled.” *Hill at 348*. A motion to dismiss “may not be sustained if facts alleged and reasonable inferences would entitle the plaintiff to any relief on any theory of the case.” Chewning v. Ford Motor Co., 579 S.E.2d 605, 612 (S.C. 2003); Williams v. Condon, 553 S.E.2d 496 (S.C. App. 2001). “In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party.” Osborne v.

Adams, 550 S.E.2d 319, 321 (S.C. 2001); Summer v. Carpenter, 492 S.E.2d 55 (S.C. 1997). “If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury.” Shearer v. Deshon, 126 S.E.2d 514, 517 (S.C. 1962).

The courts have held that “where the pleadings allege and the evidence shows a conscious and willful violation, invasion, or infringement of a legal right, the state will presume damages sufficient to sustain an action.” Cook v. Atlantic Coast Time R. Co., 190 S.E. 923, 924 (S.C. 1937); cf. Hinson v. A. T. Sistare Construction Co., 113 S.E.2d 341, 344 (S.C. 1960). “In order for a plaintiff to recover punitive damages, there must be evidence the defendant’s conduct was willful, wanton, or in reckless disregard of the plaintiffs rights.” McCourt v. Abernathy, 457 S.E.2d 603, 607 (S.C. 1995) (citing, Scott v. Fruehauf Corp., 396 S.E.2d 354 (S.C. 1990)) “A defendant may be held liable for anything which appears to have been a natural and probable consequence of his negligence.” Hill v. York County Sheriff’s Dept., 437 S.E.2d 179, 182 (S.C. App. 1993).

“When an appellate court reviews a ... court’s factual findings, the abuse-of-discretion and clearly erroneous standard are indistinguishable: A court of appeals would be justified in concluding that a ... court had abused its discretion in making a factual finding only if the finding were clearly erroneous.” Cooter & Gell v. Hartman Corp., 496 U.S. 384, 401 (1990). “An appellate court reviews the circuit court’s ruling ... for abuse of discretion.” State v. Lara, 687 S.E.2d 26, 28 (S.C. 2009) (quoting, State v. McClinton, 631 S.E.2d 895, 896 (S.C. 2006)). “An abuse of discretion occurs when the circuit court’s ruling is based upon an error of law; or, when ... the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” McClinton at 896 (quoting, Fontaine v. Peit, 354 S.E.2d 565, 566 (S.C.

1987)). “[T]his Court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way.” State v. Bridges, 298 S.E.2d 212 (S.C. 1982) (quoting, State v. Sinclair, 274 S.E.2d 411 (S.C. 1981)).

For over 200 years, there has been “a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury, its proper redress.” Marbury v. Madison, 5 U.S. 137, 147 (1803). “The decisions of the Supreme Court of South Carolina bind the Court of Appeals as precedent.” Daniels v. City of Goose Creek, 431 S.E.2d 256, 260 (S.C. App. 1993). “In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court.” Madison ex rel. Bryant v. Babcock Center, Inc., 638 S.E.2d 650, 656 (S.C. 2006). “In an appeal raising novel issues of law, Court of Appeals is free to decide issues presented with no particular deference to the trial court’s findings.” Johnson v. Arbabi, 553, S.E.2d 453, 457 (S.C. App. 2001).

ARGUMENT

I.

The court erred in determining that the Respondents' conduct while representing Appellant in the underlying criminal matter could not have been determined within the ambit of common knowledge to have fallen below an acceptable standard of care in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

Appellant Thomas is unlearned in the law, and financially constrained to litigate this matter without representation: this pecuniary hardship also precluded his capability of acquiring the affidavit of an expert within the two year statute of limitations to file this action. Therefore, Thomas relied upon South Carolina Code § 15-36-100 (C) (2) to ensure that his constitutional right of access to the courts was not barred. "[T]he legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. One of the primary rules in a construction of a statute is that the words used therein should be taken in the ordinary and popular significance." Gambrell v. Travelers Ins. Companies, 310 S.E.2d 814, 816 (S.C. 1983). It appears that the legislative intent of § 15-36-100 (C) (2), *inter alia*, was to enable all United States citizens to enjoy their right of access to the courts regardless of their financial status as guaranteed by Article I, § 22, of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

The Respondents' primary argument has been that Thomas has not stated a cause of action because of his failure to attach the affidavit of an expert to his *Complaint*; and, that Thomas' expressed causes of action cannot be embraced within the *ambit of common knowledge* exception to the expert affidavit requisite in South Carolina Code § 15-36-100 (C) (2). Thomas' breach of contract allegation is grounded on, among other things, a conflict of interest created

when the Respondents' agreed to represent Thomas' ex-wife while they were concomitantly adversaries in a family court case, (R. pp. 179-180—Exhibit 88-A), wherein, Ms. Davis had induced a bench warrant for Thomas' arrest. (R. p. 160, lines 7-9—Exhibit 107).

Respondent Michael Bolus confirmed that this was a conflict of interest during a conversation with Carol Ann Cook. (R. p. 176, line 10—Exhibit 58). A laymen jury surely would not require a law degree to detect a conflict of interest in a lawyer's decision to represent both sides of the adversarial fence: as was the case when the Respondents abandoned their duty to Thomas in their refusal to help him get out of jail when Kerri's bench warrant was served on him. Because of this betrayal, Thomas was unable to dress appropriately or, even attend to his basic hygienic needs prior to appearing in court in the underlying criminal matter. (R. p. 177, line 14—Exhibit 58).

Another cause of action that falls well with the ambit of common knowledge concerned Teddy and Krystal Martin: they appeared at trial in the underlying criminal matter to testify to the alleged victim Rachel Crowley stalking Thomas; however, Michael refused their testimony and, said that they could leave. (R. pp. 176-177, line 12—Exhibit 58). Moreover, Thomas' satellite monitoring company had documented this stalking; but Michael refused to seek their attendance despite Thomas' request that this evidence be presented to the jury. Thomas also told Michael that he wanted him to subpoena the police officers that had observed Rachel enjoying the effects of their taser, and Michael refused to compel them to appear as well.

Article I, § 14, of the South Carolina Constitution; and, the Fifth Amendment to the United States Constitution guarantees the right to have compulsory process for obtaining favorable witnesses: this right is obviously in place to ensure that a defendant is given an

opportunity to present the testimony of witnesses to corroborate their version of the facts and, would unquestionably apply to witnesses that voluntarily appear to testify. It is difficult to imagine our forefathers embracing the notion that our Constitution should be written in a language that required an *expert witness* to translate; moreover, the fact that the curriculum of secondary schools includes enlightenment to this document clearly confirms that *special learning* would not be required.

Michael's most flagrant act of negligence and nonfeasance rests in his failure to expose the multifariously, conflicting versions of Rachel's false allegations of being kidnapped, raped, and tortured by Thomas that are recorded in the *Incident Report*; *Consent to Search Premises*; two *Witness Statements*; Det. Rowan's *Affidavit*; Rachel's *Affidavit*; and, her trial testimony—revealing over 46 lies. Cast in the light of scrutiny, there are not even two of these seven modes of articulacy that are consistent: however, Michael sat idly by as the state's only prosecuting witness stumbled through over 46 lies—suggesting that he did not read these documents. Not even is a high school diploma necessary for one to correctly ascertain that this lawyer's conduct has fallen below an acceptable standard of care. Even more egregious is that Michael did not object to the prosecutor leading the alleged victim to his chosen replies: in other words, Michael allowed the prosecutor to testify for the alleged victim.

Be that as it may, Michael concerned himself with confirming only that Rachel had lied when saying that she did not live with Thomas. Merely by showing the jury Rachel's signed *Consent to Search Premises*—that stipulated Thomas' residence as her home address; and, Detective Rowan's *Affidavit* confirming that Thomas and Rachel were legally married and living

together during the time in question, this deception could have swiftly been proven to be a lie—contrived specifically for the purpose of convicting Thomas for rape. Even more disturbing is that by Michael's failure to object when the prosecutor pointed out his negligence in not challenging Rachel's conflicting allegations, Michael tacitly expressed the belief that she was telling the truth.

During the course of two separate courtroom appearances, another cause of action distinguishable within the *ambit of common* knowledge occurred when the prosecutor in the underlying criminal matter falsely informed two Judges that Thomas had 9 felonies and, at least 44 convictions: Thomas did not have any felonies; his 32 convictions were all non-violent misdemeanors; and, his crimes that were not self-deprecating were those subjecting victims to pecuniary losses, wherein, restitution was provided. However, Michael failed to rehabilitate the prosecutor's false statements or, to mitigate the impact of Thomas' criminal history with these facts: by revealing that it was resultant of the extraordinary circumstances related to Thomas' battle with the disease of addiction.

Michael's failure to point out that Thomas did not have 44 convictions or any felonies summons speculation that Michael did not review Thomas' criminal record or, that he did not care. Moreover, four months separated the prosecutor's first utterance of this false statement and its reiteration at trial: in light of this opportunity to seek confirmation of this erroneous allegation and Michael's failure to do so, he obviously did not concern himself with its veracity. This behavior can conclusively be observed under the *ambit of common knowledge* to have fallen below an acceptable standard of care.

Equally cognizant to the right to compulsory witness testimony under the *ambit of common knowledge* is Thomas' right to a speedy trial: also guaranteed by Article I, § 14, of the South Carolina Constitution; and, Sixth Amendment to the United States Constitution. The United States Supreme Court wrote that "the lower courts have generally found post accusation delay presumptively prejudicial at least as it approaches on year." Doggett v. United States, 505 U.S. 647, 652 n.1 (1992). In the underlying criminal matter, it was over two years before Thomas was taken to trial; and only then, because Thomas' wife—the alleged victim—became enraged when Thomas was arrested for allegedly associating with prostitutes and, she sought to still her jealous rage by testifying against him—otherwise, there would not have been a trial.

While there is the matter of what length of time between arrest and trial is an infringement of the right to a speedy trial, our teachers also instruct that a decision in the United States Supreme Court is the law of the land: ergo, a *laymen jury* need only to read the Court's decision in *Doggett, id.* Moreover, Michael's only concern during pretrial motions in the underlying criminal matter was to secure the *protected day* that he had scheduled to enable a timely departure for Costa Rica. (R. p. 177, line 13—Exhibit 58). With this in mind, Michael's failure to move the court for a dismissal of all charges grounded on Thomas' right to a speedy trial or, to preserve this issue for appellate review obviously fell below the standard of care for lawyers: the totality of these factors also rule out the call for a college education to qualify this conclusion. An astonishing fact is that because this brief is limited to 50 pages, the negligence revealed herein depicts less than half of the Respondents' myriad acts of malfeasance, misfeasance, and nonfeasance.

The courts have expressed that "expert testimony concerning the standard of care is not required ... in professional malpractice cases where the negligence is so obvious as to be *within*

the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.” Ciambro Corp. v. Jeffcoat and Martin, 804 F. Supp 784, 791 (D.S.C. 1992) (quoting Pederson v. Gould, 341 S.E.2d 633, 634 (S.C. 1986)).” “This *common knowledge* exception applies in legal malpractice cases.” Ciambro, id. (quoting Mali v. Odom, 367 S.E.2d 166, 168 (S.C. App. 1988)).

“The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (quoting Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 (1923)). “A proper test to be utilized in resolving a constitutional challenge made on equal protection grounds is that a statute will be found to violate equal protection only when it results in discrimination against a certain class and the classification is not rationally related to any state policy or interest.” Rosenthal v. Unarco Industries, 297 S.E.2d 638, 641 (S.C. 1982) (citing, Green v. Zimmerman, 238 S.E.2d 327 (S.C. 1977)).

In the instant case, *Marbury, supra*, makes it clear that Thomas has a liberty interest in seeking redress for the Respondents’ negligence. However when the Court dismissed Thomas’ lawsuit—even though he had met the statutory *ambit of common knowledge* that supported so many causes of action—Thomas became a victim of *intentional and arbitrary discrimination*; in addition to being denied due process and, equal protection of the laws. Thomas again fell victim to *intentional and arbitrary discrimination* when he was admonished and, accused of having a vendetta when he respectfully sought and, was denied the relief of a United States Supreme Court decision—which is analogous to a statute. *Rosenthal, id.* (R. p. 126, lines 17-

25—p. 127, lines 1-9). In light of these facts and binding authority, the *Order* dismissing this action should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

ARGUMENT

II.

The court erred in failing to grant Appellant leave to amend and supplement the pleadings and to file an amended complaint; and, in granting the Respondents' motion to strike the affidavit of William Gary White, III, in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

"The circuit court is to freely grant leave to amend a complaint when justice requires, and there is no prejudice to any other party." Lee v. Bunch, 647 S.E.2d 197, 200 (S.C. 2007); Harvey v. Strickland, 566 S.E.2d 529, 535 (S.C. 2002). "The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it." *Lee*, at 201; Collins Entertainment, Inc. v. White, 611 S.E.2d 262, 270 (S.C. App. 2005). "Prejudice occurs when the amendment states a new defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action. *Lee*, *id.*; Ball v. Canadian Am. Exp. Co., 442 S.E.2d 620, 622 (S.C. App. 1994).

The Respondents have argued that Thomas has failed to proclaim his innocence. In light of the Respondents' many acts of negligence, it is in the interest of justice that because Thomas failed to have the skill that a lawyer enjoys and, the correlated knowledge to assert his innocence in the *Complaint*, this error should be considered harmless. Moreover, because the conflict of interest involves a civil matter, Thomas' innocence is immaterial. "The traditional malpractice action is one involving an attorney's representation of a client in a civil matter. In this type of action, the client's innocence is not considered an element of the cause of action." 3 Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice § 25.3 at 234.

When Thomas was wrongfully accused of kidnapping, CDVHAN, and sexual battery on spouse—later upgraded to CSC 1st—he proclaimed his innocence and demanded a trial by jury: because of the Respondents' negligence, Thomas was precluded from establishing his actual innocence; whereby he was erroneously convicted and, sentenced to an aggregate term of 20 years in prison. The Court in Schlup v. Delo, 513 U.S. 298, 313-317 (1994) revealed analogous circumstances that led to the same constitutional infringements as those Thomas fell victim to in the instant case: their ruling confirms that Thomas' assertion of *actual innocence* is a well-grounded claim. To date, Thomas has unremittingly sought to establish his innocence: his convictions have not been affirmed and, his claim to *actual innocence* remains a standing declaration.

In the instant matter, the Respondents: "1) intentionally and recklessly inflicted severe emotional distress, and they were certain that such distress would result from their conduct; 2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, 3) the actions of the [Respondents] caused [Thomas] emotional distress; and, 4) the emotional distress suffered by [Thomas] is so severe that no reasonable person could be expected to endure it." The four essential elements of *outrageous conduct*. Upchurch v. New York, 431 S.E.2d 558, 561 (S.C. 1993) (quoting Restatement (Second) of Torts § 46 (1965)).

On February 17, 2011: Thomas filed Attorney White's expert affidavit; and, the Respondents filed motions to strike White's affidavit on March 16, 2011. The Respondents' argument was grounded on White's 90 day suspension; his alleged lack of experience as an expert; and, Thomas' failure to seek leave to amend the *Complaint*. In response, Thomas argued, *inter alia*, that Attorney White was not suspended when he provided an expert affidavit. Thomas

then secured another expert affidavit from Attorney Michael Virzi on March 28, 2011: who is foremost, an irrefutable authority on legal malpractice; and, Thomas filed a *Motion for Leave to Amend and Supplement the Pleadings and to file an Amended Complaint* on April 1, 2011. Both Attorneys White and Virzi expressed their belief that Thomas' convictions and sentences were *most probably* the result of the Respondents' negligent standard of care. (R. pp. 181-182—Exhibit 149; pp. 183-188—Exhibit 150; pp. 98-100—Motion to Amend).

During the course of oral arguments heard on April 6, 2011: Thomas informed Judge Harrington that he had alleged his innocence and had, otherwise, cured the insufficiencies and omissions therein the *Amended Complaint*; and, moved the Court to consider *all of the motions* before making a final determination—in his confusion as a layman in the practice of law, Thomas' use of the language *all of the motions* was intended to include the responsive pleadings as Thomas had only one motion pending. (R. p. 135, lines 3-5; p. 151, lines 23-25; pp. 101-108—Amended Complaint). In the *Order* filed April 19, 2011: Judge Harrington did not enter a judgment regarding Thomas' motion for leave to file the *Amended Complaint*. (R. p. 4—Order).

Thomas filed a timely *Motion to Alter or Amend a Judgment to Include Specific Findings of Fact and Conclusions of Law* on April 29, 2011, (R. pp. 109-119—Motion to Reconsider); seeking, *inter alia*, reconsideration of his motion to file the *Amended Complaint*: this motion was denied in Judge Harrington's *Order* filed May 23, 2011. (R. p. 5—Order). “[T]he courts have become more liberal, and when justice requires it, will allow of amendments at any time while the suit is depending, till judgment be given.” Porteous ads. Givens, 2 McCord 48 (S.C. 1822). “[T]he power of the court to allow amendment, by correcting a mistake in ... any ... respect, is unlimited.” Coral Gables v. Palmetto Brick Co., 191 S.E. 337, 339 (S.C. 1937). “Procedural due

process requires notice, the opportunity to be heard in a meaningful way, and judicial review.” Blanton v. Stathos, 570 S.E.2d 565, 569 (S.C. App. 2002) (Citing Grannis v. Ordean, 234 U.S. 385 (1914); Cameron & Barkley Co. v. South Carolina Procurement Review Panel, 454 S.E.2d 892 (S.C. 1995)).

When Thomas was charged with the underlying crimes that he did not commit, his 70 year old mother, Carol Ann Cook, whom is retired after working 30 years for the South Carolina Department of Social Services, exhausted her retirement fund to retain the Respondents to represent Thomas—which triggered a penalty of over \$2,300. Because Carol Ann lost her husband and sole provider to COPD in February of 2010 and, the Respondents had stripped her of any remaining resources: she was unable to help Thomas seek a timely affidavit from an expert witness. (R. pp. 156-158—Exhibit 9).

Even though Thomas fell well within the *ambit of common knowledge* exception to the requisite affidavit of an expert therein S.C. Code of Law § 15-36-100 (C) (2), Thomas later retained Attorney William Gary White for his expert opinion in this matter when the money became available. In granting the Respondents’ motion to strike Attorney White’s affidavit, (R. p. 4—Order), Judge Harrington may have, unwittingly, undermined the Supreme Court’s authority by effectively expanding the term of White’s suspension to Thomas’ detriment. “A court’s ruling on the admissibility of an expert’s testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair.” Ellis v. Davidson, 519 S.E.2d 817, 825 (S.C. App. 2004) (Citing, Fields v. Regional Med. Ctr. Orangeburg, 581 S.E.2d 489 (S.C. App. 2003)). In light of this decision, the lower court’s failure to observe the indisputable

expert testimony of attorney Virzi—commingled with striking of expert testimony from Attorney White—clearly constitutes an abuse of discretion.

“Expert testimony is admissible when it satisfies the *most probably* rule.” Baughman v. American Tel. and Tel. Co., 410 S.E.2d 537, 543 (S.C. 1991); Armstrong v. Weiland, 225 S.E.2d 851 (S.C. 1976). “In determining whether particular evidence meets this test it is not necessary that the expert actually use the words *most probably*.” (*Baughman* citing, Gamble v. Price, 347 S.E.2d 131 (S.C. App. 1986)). “It is sufficient that the testimony is such ‘as to judicially impress that the opinion ... represents his professional judgment as to the most likely one among the possible causes.’” (*Baughman, id.* quoting, Norland v. Washington General Hospital, 461 F.2d 694, 697 (8th Cir. 1972)). In the instant case, the expert affidavits of Attorneys White and Virzi meet these benchmarks. (R. pp. 181-188—Exhibits 149; and, 150 respectively).

Thomas properly moved the court to grant leave to amend his complaint and to, otherwise, cure the deficiencies therein; and, attached the expert affidavit of Attorney Michael J. Virzi—whom confirmed that Thomas has many causes of action, (R. pp. 101-108—Amended Complaint; R. pp. 183-188—Exhibit 150): because of this and the facts in this matter, justice required that Judge Harrington grant Thomas leave to file the *Amended Complaint*. Moreover, the Respondents are not prejudiced by the amendments therein. “[W]hen a demurrer is sustained for mere insufficiency, the complaint should not be absolutely dismissed, if the omission can be supplied by amendment, for the latter course saves the delay, trouble, and expense of bringing a new action.” Portman v. Garbade, 522 S.E.2d 830, 832-833 (S.C. App. 1999); Owens v. Atlantic Coast Lumber Co., 94 S.E. 15 (S.C. 1917).

The Courts *Order* to dismiss in the instant matter was grounded on Thomas' defective *Complaint*, (R. p. 145, lines 4-9): these omissions have been supplied therein the *Amended Complaint*. (R. pp. 101-108—Amended Complaint). Because Thomas has a liberty interest in seeking redress for the Respondents' negligence, *Marbury, supra*, the dismissal of Thomas' lawsuit was in violation of his right to due process; equal protection of the law; and, to be free from discrimination. *Anonymous, supra*. In light of these facts and binding authority, the dismissal of this action should be reversed; the *Amended Complaint* should be admitted; the *Order* to strike the affidavit of William Gary White, III, should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

ARGUMENT III.

The court erred in granting Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

While Thomas is now seeking to have his convictions and sentences vacated, Thomas has alleged that he is innocent and, was only found guilty because of the Respondents' breach of fiduciary duty; breach of contract; and, legal malpractice in the course of representing him in the underlying criminal matter. The facts in this case reveal that the Respondents' engaged in *outrageous conduct*, *Upchurch, supra*; and, acted with a deliberate indifference to their duty to defend Thomas against the erroneous charges of kidnapping and CDVHAN. In light of these circumstances, this matter should be considered "a question of novel impression that should not be decided on demurrer. ... This rule, however, only applies either where there is real cause for doubt and it is necessary that the evidence be fully developed, or where it is clear that the ends of justice would be promoted by a trial on the merits." Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347, 351 (S.C. App. 1986); cf. Springfield v. Williams Plumbing Supply Co., 153 S.E.2d 184 (S.C. 1967).

"Where the evidence warrants a reasonable inference that the master-servant relationship exists, the issue should be submitted to the jury." Reid v. Kelly, 262 S.E.2d 24, 26 (S.C. 1980); Anderson v. West, 241 S.E.2d 551, 553 (S.C. 1978). In the instant case and as recent as June 29, 2011: the websites *Boluslawfirm.com*; *Whitepages.com*; and, *Realpagesites.com* advertise the legal services of *Bolus & Bolus* and the *Bolus Law Firm*. Be that as it may, Respondent Keith Bolus alleges that he practices law independently from Respondent Michael Bolus; and, that

Bolus & Bolus, nor, the *Bolus Law Firm* even exist. (R.pp. 38-41—Motions to Dismiss; p. 57—Memorandum in Support).

Notwithstanding this contrariness is the clear and convincing evidence that Keith and Michael are partners in the practice of law. It is also obvious that Michael is guilty of gross negligence: when cast in the light of this partnership that the Respondents have proclaimed to exist time and again—therein, mutually inclusive promotional endeavors—Keith is clearly culpable by imputed negligence. *Black's (9th Edition)* at 1134, defines *Imputed Negligence* as “[n]egligence of one person charged to another; negligence resulting from a party’s special relationship with another party who is originally negligent.”

Keith also asserts that Thomas failed to allege anywhere in the *Complaint* that he is affiliated with the *non-existent entity Bolus & Bolus*; and, that neither *Keith Bolus* or *Bolus & Bolus* appear in the correspondence and representation agreement that Thomas attached as an exhibit to the *Complaint*. The court in Beasley v. Kerr-McGee Chemical Corp, 257 S.E.2d, 726, 727 (S.C. 1979), has determined that “[t]he terms of a contractual agreement are not conclusive in determining the association between two parties where there is evidence outside the contract establishing an agency relationship.” In light of these facts and binding authority, the Order dismissing the Respondents should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

ARGUMENT IV.

The Respondents engaged in deceptive trade practices; and, participated with their attorneys in a civil conspiracy by the subornation of perjury constituting extrinsic fraud and fraud upon the court in their denial to practicing law as Bolus and Bolus and the Bolus Law Firm.

“Fraud may be deduced not only from *deceptive* or false representations, but from facts, incidents, and circumstances which may be trivial in themselves, but decisive in a given case of the fraudulent design. It is a state of mind, dependent on intent, which is provable by circumstantial evidence.” (Emphasis added). Carter v. Boyd Const. Co., 178 S.E.2d 536, 539 (S.C. 1971) (quoting Parham-Thomas-McSwain v. Atlantic Life Ins. Co., 96 S.E. 697, 698 (S.C. 1918)). For many years, the Respondents in the instant case have implemented many methods to announce to the public the existence of the *Bolus & Bolus Law Firm*: offering the benefits and security of an established law firm with *Over 50 years of combined experience* with the assurance that *We’re here to help, that’s a promise*. (R. pp. 161-170—Exhibits A-F). However, because Michael Bolus’ malfeasance, misfeasance, and nonfeasance has been revealed: the Respondents are now adamantly asserting that the *Bolus & Bolus Law Firm* does not exist.

“To be actionable under the *Unfair Trade Practices Act* The unfair or deceptive act or practice in the conduct of trade or commerce must have an impact upon the public interest.” *Noack at 350*. More likely than not, these publicized advantages in the instant matter have influenced a number of potential clients—in addition to Thomas—to seek representation from *Bolus & Bolus*. The court in *Carter, id.*, has determined that “[i]n a case of actual fraud, based upon representation, there are nine elements essential to recovery, which are:

- 1) a representation;
- 2) its falsity;
- 3) its materiality;
- 4) either knowledge of its falsity or a reckless disregard of its truth or falsity;
- 5) intent that the representation be acted upon;
- 6) the hearer's ignorance of its falsity;
- 7) the hearer's reliance on its truth;
- 8) the hearer's right to rely thereon; and,
- 9) the hearer's consequent and proximate injury."

With respect to these elements, the Respondents in the instant matter have perpetrated a fraud: the *Exhibits* of their various advertisements confirm [1] *a representation* of practicing law as Bolus & Bolus; the Respondents have alleged this to be [2] *a falsity* in their pleadings; the [3] *materiality*; and, [4] *either knowledge of its truth or falsity or a reckless disregard of the truth or falsity* was also revealed therein the Respondents' pleadings. In light of the Respondents' signage and websites seeking public awareness, they obviously have the [5] *intent that the representation be acted upon*; and, Thomas' belief that he had retained the Bolus & Bolus law firm would establish [6] *the hearer's ignorance of its falsity*: because of truth in advertising laws, [7] *the hearer's reliance on its truth*; and, [8] *the hearer's right to rely thereon* are confirmed by Thomas' right to the equal protection of this law. The final element regarding [9] *the hearer's consequent and proximate injury* was answered by Thomas' reliance on *Bolus & Bolus* and his 20 year sentence resulting from that reliance.

"What constitutes false, misleading, or deceptive advertising or promotional practices subject to action by Federal Trade Commission." § 17. *Nature or status of business*; "[An] advertising which falsely represents the type of business done or the extent of such business has on occasion been restrained by the Federal Trade Commission." American Law Reports, Annotated, 65 ALR2d 268. § 5. "*View that capacity to deceive is sufficient to support determination of deceptiveness*:" [T]he courts held or recognized that in the absence of statutory

language regarding the necessity of actual deception, a capacity to deceive is sufficient to establish the commission of a violation of particular state deceptive trade practice or consumer protection statutes.” Donald M. Zupanec, Annotation, Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts, 89 ALR3d 467. In the instant matter, the Respondents use of the *Internet* for deceptive advertising constitutes a Federal, and a State violation.

South Carolina Code of Laws § 39-1-20 articulates that making intentionally untrue statements in advertising is punishable by fine or imprisonment; moreover, § 39-5-35 stipulates that “[n]otwithstanding another provision of law, it is unlawful trade practice ... for an attorney to advertise his services in this State in a false, deceptive, or misleading manner.” In the present case—because of these laws—the Respondents’ rescission of the promotional slogan of *Over 50 years of combined experience* appears to be an admission of culpability for fraud and unfair trade practices.

The complexity of this matter seems to rest in determining if the Respondents are practicing law as *Bolus & Bolus*; and, are participating with their attorneys in the subornation of perjury by filing fraudulent pleadings and, concealing proof that they are operating in this capacity; or, if the Respondents are not practicing law as *Bolus & Bolus*, and they are inveigling clients with false advertisements and, that this fraud is one of the proximate causes of Thomas’ wrongful convictions and sentences. “If more than one reasonable inference may be drawn from the evidence, then the question of fraud is for the jury.” *Carter, id.*; Thompson v. Bass, 166 S.E. 346, 350 (S.C. 1932).

“Extrinsic fraud is ‘fraud that induces a person not to present a case or deprives the person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action.’” *Chewning, supra at 610* (quoting *Hilton Head Ctr. Of South Carolina v. Public Serv. Comm’n.*, 362 S.E.2d 176, 177 (S.C. 1987)). “Extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment.” *Bryan v. Bryan*, 66 S.E.2d 609, (S.C. 1951).

If the Respondents in the instant case are found to be fraudulently alluding to a partnership in an endeavor to solicit clients or, simply attempting to conceal their alliance and reduce culpability: the Respondents should be required to face the consequences of that misrepresentation. In the latter circumstance, the *corpus delecti* of extrinsic fraud manifests: because it appears that Judge Harrington’s decision to dismiss the Respondent *Bolus & Bolus* was grounded on the Respondents’ pleadings that this is a *non-existent entity*, Thomas has been denied *the opportunity to be heard*.

The attorneys for Keith Bolus; and, Michael Bolus acting *pro se* have rigorously argued that *Bolus & Bolus* does not exist. In light of this fact and that Keith and Michael are attorneys: the reach of this subornative perjury is to also perpetrate fraud on the court. “[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court.” *Chewning at 611*, (quoting *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir. 1987)).

The court in *Chewning, id.* also finds that “[a]ttorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice.

Accordingly, where an attorney embarks on a scheme to ... suborn perjury ..., *extrinsic fraud* constituting a fraud on the court occurs.” (Emphasis added). It was determined that an “attorney has an ethical duty not to perpetrate fraud upon the court by knowingly presenting perjured testimony.” *Chewning, id. (n.5)* (citing *In the Matter of Goodwin*, 305 S.E.2d 578 (S.C. 1983)). It was also held that “because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice.” *Chewning, id. (n.7)* (citing *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238 (1944)).

“The elements a plaintiff must demonstrate in order to prove civil conspiracy include: (1) the combination of two or more people; (2) for the purpose of injuring the plaintiff; (3) causing special damages.” *Moore v. Weinberg*, 644 S.E.2d 740, 750 (S.C. App. 2007) (quoting *Pye v. Estate of Fox*, 633 S.E.2d 505, 511 (S.C. 2006)). In the present case, [1] the Respondents *in collusion* with the Carlock, Copeland, and Stair Law Firm fraudulently denied the existence of the Bolus & Bolus Law Firm; [2] *for the purpose of injuring* Thomas by influencing the dismissal of his lawsuit; and, [3] creating *special damages* in the expenses to appeal the erroneous dismissal of this action that was induced by this fraud.

“In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Moore, id.* (quoting *Cowburn v. Leventis*, 619 S.E.2d 437, 453 (S.C. App. 2005)). “Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances. *Id.* Because civil conspiracy is *by its very nature covert and clandestine*, it is usually not provable by direct evidence. *Id.*” The Court determined that an “attorney [is] liable for conspiracy if actively involved in wrongful conduct.” *Stiles v. Onorato*, 457 S.E.2d

601, 602 (S.C. 1995) (quoting Fraidin v. Weitzman, 611 A.2d 1046 (1992)). “Additionally, attorneys have been held liable for fraud ... in conjunction with their representation of clients. See, e.g., L&H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372 (Minn. 1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his ... client may be held liable for fraud).” *Stiles, id.*

In the instant matter, Thomas is seeking 2.5 million in actual damages—in addition to unspecified punitive damages—from attorneys represented by attorneys: because of this affiliation and the circumstances involved, there is a clear indication that reciprocity is afoot. In light of these facts and binding authority, criminal charges should be placed against the Respondents for making *intentionally untrue statements in advertising*; the Respondents and their respective attorneys should be found guilty of fraud and sanctioned accordingly; the dismissal of this action should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

CONCLUSION

The lower court erred in failing to grant Appellant leave to amend and supplement the pleadings and to file the *Amended Complaint*; in granting the Respondents' motion to strike the affidavit of William Gary White, III; and, in granting the Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus: in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

Furthermore, the Respondents did engage in deceptive trade practices; and, participated with their attorneys in a civil conspiracy by the subornation of perjury constituting extrinsic fraud and fraud upon the court in their denial of practicing law as *Bolus & Bolus* and the *Bolus Law Firm*. In light of these facts and binding authority: the *Order* dismissing the Respondents should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint; and, for such other relief as this Court deems just and proper.

February 7, 2012
Columbia, SC

Respectfully submitted,

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas,

Appellant,

V.

Bolus & Bolus,
Attorneys Keith Bolus, Officially,
Michael T. Bolus, Officially
and Individually,

Respondent.

CERTIFICATE OF COMPLIANCE

I hereby certify that this *Final Brief* of Appellant complies with Rules 211 (b), SCACR.

February 7, 2012
Columbia, SC

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2010-CP-10-4820

Clark D. Thomas,

Appellant

v.

Michael T. Bolus, Keith
Bolus, and Bolus & Bolus

Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly dismissed Appellant's Complaint for failure to state a claim pursuant to South Carolina Code Section 15-36-100 where Appellant failed to contemporaneously file an expert affidavit as part of a complaint alleging professional negligence that does not involve a subject matter that lies within the ambit of common knowledge and experience.
2. Whether tolling the statute of limitations, if properly before this Court, would be appropriate where Appellant had the opportunity to file a new action, but instead choose to stand on his initial Complaint and file this appeal.
3. Whether the decision of the trial court should be affirmed for additional grounds appearing in the record, including Appellant's failure to state a claim for criminal legal malpractice where Appellant failed to allege his innocence in the Complaint, and Appellant's failure to state a claim against Respondent Keith Bolus where Appellant failed to even reference his name in the Complaint other than in the caption.

STATEMENT OF THE CASE

This is an appeal from the trial court's dismissal of a legal malpractice action brought by Appellant Clark D. Thomas against Respondents Michael "Tommy" Bolus, Keith Bolus, and "Bolus & Bolus." The Summons and Complaint were filed on June 15, 2010 in the Court of Common Pleas for Charleston County. (R. p. 6). The Complaint sets forth causes of action for legal malpractice, breach of fiduciary duty and breach of contract, all of which arise out of an underlying criminal matter in which Thomas was represented by Tommy Bolus. (R. pp. 6-12). The Complaint prays for actual damages in the amount of \$2,550,000, plus unspecified punitive damages, and pre-judgment and post-judgment interest. (R. p. 12).

The Summons and Complaint were served on Tommy Bolus and Keith Bolus on June 21, 2010 and June 22, 2010, respectively. Tommy Bolus filed an Answer and Motion to Dismiss, individually and on behalf of "Bolus & Bolus," on July 12, 2010. (R. pp. 13-19, 27, 38-39). Keith Bolus filed an Answer and Motion to Dismiss, individually and on behalf of "Bolus & Bolus," on July 14, 2010. (R. pp. 20-26, 32-33, 40-41). The Motions to Dismiss were brought

pursuant to Rule 12(b)(6) and 12(c), SCRCF, and South Carolina Code § 15-36-100 on grounds that Thomas failed to file an expert affidavit as part of the Complaint, and failed to state a claim upon which relief can be granted. Thomas served three separate replies to the Motions to Dismiss on August 9, 2010, asserting that an expert affidavit was not required pursuant to the common knowledge exception, and that his Complaint otherwise stated causes of action against Tommy Bolus, Keith Bolus, and Bolus & Bolus. (R. pp. 28-31, 34-37, 42-50).

The Motions to Dismiss were originally scheduled to be heard on February 17, 2010. The day before the hearing, Thomas filed an Affidavit of William Gary White, III. (R. pp. 181-182). Keith Bolus filed a Memorandum in Support of Motion Dismiss prior to the hearing on February 17, 2011. (R. pp. 51-58). The Motions ultimately did not go forward because the Department of Corrections failed to transport Thomas to the hearing. The following day, the Motions were rescheduled for April 6, 2011.

Keith Bolus and Tommy Bolus filed Motions to Strike the Affidavit of William Gary White on March 17, 2011 and March 21, 2011, respectively. (R. pp. 59-77, 78-79). The Motions to Strike were brought on grounds that the affidavit was untimely and filed without leave of court, that the affiant was unqualified to render an expert opinion, and that the substantive contents of the affidavit failed to comply with the requirements of South Carolina Code § 15-36-100. Thomas filed a Return to the Motion to Strike on March 29, 2011. (R. pp. 80-83). On April 1, 2011, Thomas filed a second Memorandum in Opposition to the Motions to Dismiss (R. pp. 84-97), and a Motion for Leave to Amend the Complaint. (R. pp. 98-100).

The Motions to Dismiss and Motions to Strike were heard on April 6, 2011 by the Honorable Kristi L. Harrington. (R. pp. 120-155). The trial court granted the Motions to Dismiss and Motions to Strike by way of a Form 4 Order filed on April 19, 2011. (R. p. 4). Thomas filed

a Motion to Alter or Amend on April 29, 2011 (R. pp. 109-119), which was denied by way of a Form 4 Order filed on May 23, 2011. (R. p. 5). Thomas served the instant Notice of Appeal on June 22, 2011, which was filed with the trial court on June 23, 2011.

BACKGROUND

This legal malpractice action arises out of Tommy Bolus's representation of Appellant Clark D. Thomas in an underlying criminal matter. (R. pp. 6-12). In June of 2006, Plaintiff Clark D. Thomas was charged with kidnapping, criminal domestic violence of a high and aggravated nature, and sexual battery of a spouse. (R. pp. 156-158). The case went to trial in July of 2008. On July 10, 2008, Thomas was found guilty of kidnapping and criminal domestic violence of a high and aggravated nature and sentenced to 20 years for kidnapping and 10 years for domestic violence. *See generally State v. Clark D. Thomas*, 2006-GS-10-12295, -12296 and 2007-GS-10-3499.

Clark D. Thomas filed this lawsuit on June 15, 2010 against Tommy Bolus, Keith Bolus and "Bolus & Bolus" alleging that Tommy Bolus deviated from the standard of care in representing him in the underlying criminal matter. (R. pp. 6-12). The allegedly negligent conduct involves matters of trial strategy and tactics in the course of defending Thomas against the felony charges (R. pp. 10-12, ¶ 27), and a purported conflict of interest involving Tommy Bolus's representation of Thomas's ex-wife Kerri W. Davis¹ in another criminal matter unrelated to Thomas's criminal charges. (R. p. 10, ¶ 24). Two exhibits were attached to the Complaint: a representation agreement between Tommy Bolus and Clark Thomas dated June 20, 2006, (marked as "Exhibit 9," R. pp. 156-158), and an affidavit from Thomas's ex-wife Kerri W.

¹ The complaining witness in Thomas's criminal matter was then-estranged wife Rachel Crowley, not Ms. Davis. *See State v. Clark D. Thomas*, 2006-GS-10-12295, -12296 and 2007-GS-10-3499.

Davis, (marked as “Exhibit 115,” R. pp. 159-160), discussing Mr. Bolus’s representation of her in the unrelated criminal matter.

The Complaint seeks damages for alleged professional negligence, but was filed without an expert affidavit as required by South Carolina Code § 15-36-100. The Complaint also failed to allege that Thomas was innocent of the underlying charges, and failed to name Keith Bolus anywhere in the pleading except in the caption. (R. pp. 6-12). The Bolus Respondents moved to dismiss the Complaint on these grounds pursuant to Rule 12(b)(6) and 12(c), SCRCP, and South Carolina Code § 15-36-100. (R. pp. 27, 32-33, 38-41). Thomas served replies in opposition to the Motions to Dismiss within thirty days of their filing, which asserted that he was not required to attach an expert affidavit pursuant to the common knowledge exception found in South Carolina Code § 15-36-100(C)(2), and that his Complaint was not otherwise defective. (R. pp. 28-31, 34-37, 42-50).

The day before the Motions to Dismiss were initially scheduled to be heard – *eight months after filing the Complaint* – Thomas attempted to avoid dismissal by filing the Affidavit of William Gary White, III. (R. pp. 181-182). The Bolus Respondents subsequently filed Motions to Strike the Affidavit of White on the grounds set forth above. (R. pp. 59-77, 78-79). Thomas asserted in his Return to the Motions to Strike that he should be excused from compliance with Section 15-36-100 because he is an “unlearned *pro se* litigant.” (R. p. 81).

Five days before the *second* scheduled hearing, Thomas filed a Motion for Leave to Amend the Complaint (R. pp. 98-100) and Proposed Amended Complaint (R. pp. 101-108), and a second Memorandum in Opposition to the Motions to Dismiss (R. pp. 84-97). At the hearing on April 6, 2011, the Honorable Kristi L. Harrington declined to entertain Thomas’s Motion to Amend as untimely. (R. p. 125, line 22-p. 126, line 6). The remaining motions were taken under

advisement. (R. p. 154, lines 12-15). Judge Harrington granted the Bolus Respondents' motions on April 19, 2011 (R. p. 4), well within three years from the date Thomas alleges in his Complaint that his cause of action accrued. (R. p. 10, ¶ 27). However, rather than initiate a new action, Thomas filed a Motion to Alter or Amend on April 29, 2011 (R. pp. 109-119), and after it was denied on May 23, 2011 (R. p. 5), Thomas served this Notice of Appeal.²

STANDARD

In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 274 (S.C. 2007). "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (S.C. App. 1998). "In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCF, the appellate court applies the same standard of review as the trial court." Doe, 373 S.C. at 395, 645 S.E.2d at 274 (citing Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (S.C. App. 2001)).

When considering a motion for judgment on the pleadings pursuant to Rule 12(c), the court regards all properly pleaded factual allegations as admitted. Falk v. Sadler, 341 S.C. 281, 286, 533 S.E.2d 350, 354 (S.C. App. 2000). A motion for judgment on the pleadings will be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action is stated. Rosenthal v. Unarco Industries, Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (S.C. 1982).

² Thomas's Designation of Matters to be Included in the Record on Appeal includes numerous items that were not presented to the lower court. For purposes of clarifying the record, Respondents crave reference to Appendix A (R. p. 189), which lists the materials Thomas filed with the trial court as exhibits to motions and memoranda.

ARGUMENTS

I. THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT FOR FAILURE TO COMPLY WITH SOUTH CAROLINA CODE SECTION 15-36-100.

A. Appellant Was Required to Attach an Expert Witness to the Complaint.

South Carolina Code § 15-36-100 (Supp. 2005) requires a plaintiff in a legal malpractice action to file an expert affidavit as part of the complaint. The expert affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” *Id.*

There are two exceptions to the contemporaneous filing requirement. Section 15-36-100(C)(1) allows a plaintiff additional time to supplement an affidavit when the statute of limitations is set to expire within ten days of filing the complaint. When the plaintiff alleges in the complaint that an affidavit could not be prepared because of these time constraints, the statute allows an affidavit to be supplemented within 45 days of filing. The second exception is found in Section 15-36-100(C)(2), which provides that “[t]he contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.”

Unless one of these two exceptions is met, the expert affidavit must be filed as part of the complaint. There is no language in Section 15-36-100 that indicates the contemporaneous filing requirement is otherwise optional. *See id.* (“the plaintiff *must file as part of the complaint* an affidavit of an expert witness . . . if an affidavit is not filed . . . the complaint is subject to dismissal for failure to state a claim.”) (emphasis added).

Respondents Tommy Bolus and Keith Bolus filed Motions to Dismiss with their initial responsive pleadings raising Thomas's failure to file an expert affidavit. (R. pp. 27, 32-33; 38-41). Thomas served replies to the Motions to Dismiss on August 9, 2010, arguing among other grounds, that an expert affidavit was not required pursuant to the common knowledge exception. (R. pp. 28, 34, 47-48). While Thomas subsequently attempted to circumvent the mandatory contemporaneous filing requirement by filing an affidavit some eight months after filing the Complaint, he continues to maintain that an affidavit was not required in this case. (Brief of Appellant, p. 1, Statement of Issues on Appeal).

(i) The Common Knowledge Exception is Not Applicable to Appellant's Complaint.

"A plaintiff in a legal malpractice action must generally establish the standard of care by expert testimony." Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612, 613 (S.C. 1996). "Expert testimony concerning the standard of care is not required, however, in professional malpractice cases where the negligence is so obvious as to be 'within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.'" Cianbro Corp. v. Jeffcoat & Martin, 804 F. Supp. 784, 790-91 (D.S.C. 1992) (*quoting* Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633, 634 (S.C. 1986)).

The application of the common knowledge exception is reserved for those limited situations where the alleged professional negligence is "clear and obvious or where the lawyer's shortcomings would be plain to laymen without the testimony of those trained in the profession." Id. at 791. "Expert testimony is required in most legal malpractice cases because 'the jury cannot rationally apply a general statement of the standard of care unless it is aware of what the

competent lawyer would have done under similar circumstances.” *Id.* In Cianbro, the court in further explained:

[I]t is imperative that the plaintiff in a legal malpractice action be prepared to establish attorney negligence with expert testimony unless the alleged negligence is plainly obvious to all, and the plaintiff should not readily assume that the conduct about which he complains is plainly obvious. With this expert evidence, the jury is able to analyze the attorney’s conduct and measure it against the action that a competent attorney would be expected to take under the same circumstances. Without this evidence, the jury is improperly left to speculate as to the standard of conduct that the legal community should follow.

Id. at 793; *see also* Southeastern Housing Foundation v. Smith, 380 S.C. 621, 670 S.E.2d 680, 694-95 (S.C. App. 2008) (*citing* Cianbro Corp. with approval); Sims v. Hall, 357 S.C. 288, 592 S.E.2d 315, 319 (S.C. App. 2003) (same).

South Carolina courts have long recognized that expert testimony is required unless the subject matter is of common knowledge to laypersons. *E.g.* Mali v. Odom, 295 S.C. 78, 367 S.E.2d 166, 168 (S.C. App. 1988). This general requirement of expert testimony in professional negligence cases was codified in 2005 with the enactment of Section 15-36-100 as part of the South Carolina Frivolous Civil Proceedings Sanctions Act. The statute similarly contains a common knowledge exception that closely follows the language in Cianbro Corp., 804 F. Supp. at 790-91, and Pederson, 341 S.E.2d at 634.

Section 15-36-100(C)(2) provides that for the common knowledge exception to apply, there must be a “*pleaded specification of negligence* involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.” *Id.* (emphasis added). As such, the determination is confined to the allegations in the complaint.

In the instant matter, a review of the allegations in Thomas’s Complaint shows the trial court correctly determined that the common knowledge exception was not applicable. Thomas

sets forth ten instances of allegedly negligent conduct in his Complaint. (R. pp. 10-12, ¶ 27). Nine of these involve criminal defense trial tactics, plea negotiations and trial strategy in the course of defending serious felony charges. Simply put, these are not matters within the common knowledge and experience of lay persons, but instead involve matters of professional judgment that require a thorough understanding of procedural and substantive criminal law and the Rules of Professional Conduct. Thomas concedes as much in his Complaint, alleging that he “specifically relied on [Tommy Bolus’s] knowledge and expertise regarding trial strategy [and] all decisions during the trial process[,]” (R. p. 8, ¶¶ 16-17), but now argues that these are matters of common knowledge in an attempt to circumvent the expert affidavit statute. *See Spence v. Spence*, 368 S.C. 106, 114, 628 S.E.2d 869, 873 n. 1 (S.C. 2006) (finding that in an appeal of a ruling made pursuant to Rule 12(b)(6), in which the facts asserted in the complaint are deemed to be true, the plaintiff was bound by factual assertions made in the complaint).

While South Carolina appellate courts have not had the opportunity to address the application of the common knowledge exception in the context of alleged negligence arising out of an attorney’s trial tactics and strategy, courts in other jurisdictions have consistently held that expert testimony is required to properly evaluate such matters of judgment. *E.g. Alexander v. Turtur & Associates, Inc.*, 146 S.W.3d 113, 119-20 (Tex. 2004) (“Decisions of which witnesses to call, what testimony to obtain or when to cross-examine almost invariably are matters of judgment. As such, the wisdom and consequences of these kinds of tactical choices made during litigation are generally matters beyond the ken of most jurors. And when the causal link is beyond the jury’s common understanding, expert testimony is necessary.”); *Sanders v. Smith*, 83 N.M. 706, 496 P.2d 1102, 1105 (N.M. App. 1972) (“A lay witness does not have the experience,

knowledge and wisdom to opionate on the complexities of trial practice, including the verdict that a jury will render.”).

In a case involving allegations against a criminal defense attorney similar to those made in Thomas’s Complaint, the court in Williams v. Callaghan, 938 F. Supp. 46, 50 (D.D.C. 1996), held that the common knowledge exception was not applicable and that expert testimony would be required to support the plaintiff’s malpractice action. In Williams, the plaintiff filed the legal malpractice action following his conviction in the underlying trial, alleging the following acts of misconduct by his defense attorney:

- (1) failure to adequately investigate identification evidence with respect to plaintiff’s street name;
- (2) failure to adequately interview potential witnesses;
- (3) failure to make any pre-trial motions;
- (4) failure to move for a mistrial;
- (5) failure to vigorously cross-examine the police officer who field-tested the drugs; and
- (6) failure to zealously advocate plaintiff’s cause.

Id. at 48-49. After failing to produce an expert, the plaintiff argued that the allegations fell within the common knowledge exception. *See id.* at 50 (“The requirement to produce an expert is excused only where the attorney’s lack of care and skill is so obvious that the trier of fact can find negligence as a matter of common knowledge.”). The Williams court disagreed, finding that the alleged negligence involved trial tactics, and that “[s]trategy with respect to trial tactics is generally held to be within the discretion of the attorney.” Id.

The fact . . . that the attorney in the heat of trial disregards the direction of the client as to trial strategy or activity does not give the client a right of action against the attorney. After all, it is the duty of the attorney who is a professional to determine trial strategy. If the client had the last word on this the client would be his or her own lawyer. Therefore, an attorney does not ordinarily violate his duty to the client by rejecting a client’s suggested tactics.

Id. (quoting Applegate v. Dobrovir, Oakes and Gebhardt, 628 F. Supp. 378, 382 (D.D.C. 1985)); see also Mavity v. Fraas, 456 F. Supp. 2d 29, 33 (D.D.C. 2006) (allegations that attorney improperly pursued plaintiff's case in federal court rather than through the ALJ process, failed to adequately prepare and present her case in a professional manner, and filed evidence in a tardy manner resulting in its exclusion from trial were all matters beyond the common knowledge of laypersons); Ackerly and Brown, LLP v. Smithies, 109 Conn. App. 584, 952 A.2d 110, 114-15 (Conn. App. 2008) (expert testimony was required where the allegations of negligence involved such tactical questions as whether to file a summary judgment motion, questions asked at voir dire, questions asked of witnesses, whether to make objections to certain evidence, and the substance of requests to charge and effective cross-examination, and where the attorney had many years of experience and learning and used this background to make various tactical and legal decisions before, during, and after trial); Moore v. Crone, 970 A.2d 757, 760 (Conn. App. 2009) (finding the common knowledge exception was not applicable to a legal malpractice action arising out of attorney's handling of underlying criminal appeal where the alleged negligence involved failing to raise issues of double jeopardy, fair notice of the charging documents, instructional error, subject matter jurisdiction, inconsistent verdicts, failing to protect plaintiff's constitutional rights, failing to notice that a portion of record was missing, and failing to brief every separate act of alleged prosecutorial misconduct); Dean v. Tucker, 205 Mich.App. 547, 517 N.W.2d 835, 837 (Mich. App. 1994) (plaintiff was required to provide expert testimony regarding the issue of the attorney's trial strategy in legal malpractice action premised on attorney's alleged negligence in not calling a particular witness to testify in the underlying personal injury trial); Shields v. Campbell, 277 Or. 71, 559 P.2d 1275, 1280 (Or. 1977) ("Since plaintiff, to prevail in this case, had to convince the trier of fact by a preponderance of the

evidence that the result in the earlier trial would have been favorable to her had defendant introduced the two documents in question, we know of no other way in which the jury could have been guided in determining the issue than the presentation of opinion by properly qualified experts.”).

In a last ditch effort, Thomas focuses his common knowledge argument on an alleged conflict of interest arising out of Tommy Bolus’s representation of Thomas’s ex-wife in an unrelated criminal matter. (R. pp. 90-91). Thomas alleges in his Complaint that his ex-wife Kerri Davis retained Tommy Bolus in 2008 to represent her in connection with a driving under the influence charge, during the time when Tommy Bolus was also representing Thomas on the charges of kidnapping, criminal domestic violence of a high and aggravated nature, and sexual battery of a spouse. (R. p. 10-12, ¶¶ 21-24). Thomas alleges there was a conflict of interest in representing Thomas and Ms. Davis in their unrelated criminal matters because of another unrelated family court matter between Thomas and Ms. Davis involving Thomas’s child support obligations. (R. p. 10, ¶24, p. 12, ¶ 27(j)). Tommy Bolus did not represent either Thomas or Ms. Davis in the family court matter, and neither Thomas nor Ms. Davis was directly adverse to the other in their respective criminal matters.

This alleged conflict of interest fails to meet the requirements of the common knowledge exception for two reasons. First, the question of whether there was an actual conflict of interest that required Thomas’s informed consent is not a matter that can be resolved by a layperson’s reference to his or her common knowledge and experience. The Complaint itself demonstrates that Tommy Bolus’s representation of Ms. Davis in her criminal matter was not directly adverse to his representation of Thomas in his criminal matter. (R. p. 10, ¶¶ 21-24). Tommy Bolus was not representing Thomas and Ms. Davis in the same litigation, and Tommy Bolus did not act as

an advocate against Thomas in representing Ms. Davis in her unrelated criminal matter. Thomas himself highlights the need for expert testimony on the conflict of interest issue by incorrectly asserting that Tommy Bolus was “representing both sides of the adversarial fence. . . .” (R. p. 91).

Second, even if the alleged conflict of interest were a matter that could be resolved without specialized learning, which it cannot, an alleged a conflict of interest does not amount to a pleaded specification of negligence in and of itself. An attorney’s ethical obligations under the Rules of Professional Conduct are separate and distinct from an attorney’s civil liability for alleged professional negligence. The failure of an attorney to comply with a Rule of Professional Conduct is not evidence of negligence *per se*. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 437, 472 S.E.2d 612, 614 n. 6 (S.C. 1996); *see also* Rule 407, SCACR, Rules of Prof. Conduct, Scope (“Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.”). In Smith, 322 S.C. at 437, 472 S.E.2d at 613-614, the court further highlighted the need for expert testimony in legal malpractice cases that implicate the Rules of Professional Conduct. In discussing the majority view that it ultimately adopted, the Smith court noted that the courts which “permit discussion of such a violation at trial as some evidence of the common law duty of care . . . generally rule that *the expert must address his or her testimony to the breach of a legal duty of care and not simply to breach of disciplinary rule.*” *Id.* (emphasis added).

In summary, the subject matter of the Complaint involves the propriety of trial tactics and strategy employed by a criminal defense attorney in representing his client against multiple felony charges, and an attorney’s exercise of judgment in undertaking to represent his client’s ex-wife in a wholly unrelated matter in which neither client’s interests was adverse. To establish

his claim for professional negligence, Thomas would be required to show not only that Tommy Bolus's representation of Thomas breached the applicable standard of care, but also that Thomas's conviction was proximately caused by his attorney's conduct rather than Thomas's own criminal activity. *See Brown v. Theos*, 345 S.C. 626, 550 S.E.2d 304, 306 (S.C. 2001) ("[I]n an action for legal malpractice based on conviction of a crime the general standard is the plaintiff must show innocence of the crime in order to establish liability.").

To suggest that these allegations involve the type of subject matter that a layperson could resolve based solely upon his or her own knowledge and experience, without any specialized learning, would eviscerate the requirement of expert testimony in professional negligence cases. Accordingly, the trial court correctly determined that the common knowledge exception was not applicable, and that Thomas was required to file an expert affidavit contemporaneously with the Complaint.

B. The Trial Court Properly Dismissed the Complaint Notwithstanding Appellant's Untimely Attempts to Supplement an Affidavit and Amend the Complaint.

Thomas contends the trial court erred in failing to allow his action proceed after he attempted to avoid dismissal by filing an untimely affidavit and moving to amend his Complaint just prior to the Motions hearing. The trial court properly struck the Affidavit of Gary White and declined to entertain Thomas's Motion to Amend.

(i) Dismissal Pursuant to Section 15-36-100 Cannot be Avoided by Filing an Untimely and Defective Affidavit.

There are only two situations in which Section 15-36-100 permits a professional negligence action to proceed when the complaint is filed without an expert affidavit, and neither is applicable to this case. *See* Section 15-36-100(C)(1) and (C)(2), discussed *supra*. The language of the statute is clear: unless one of these two exceptions is met, the expert affidavit

must be filed as part of the complaint. There are no provisions in Section 15-36-100 that allow a plaintiff to avoid dismissal by simply filing an affidavit before the hearing, nor any language in the statute that indicates the contemporaneous filing requirement is otherwise optional in this situation.

Section 15-36-100 required Thomas to file an expert affidavit contemporaneously as part of the Complaint. The statute does not permit Thomas to attempt to avoid dismissal by filing an untimely and defective affidavit. The trial court correctly applied the plain language of Section 15-36-100 in striking the Affidavit of White and dismissing the Complaint.

(ii) The Trial Court Properly Declined to Entertain the Motion to Amend.

The trial court did not err in declining to entertain Thomas's Motion for Leave to Amend filed five days before the Motions to Dismiss and Motions to Strike were heard. Rule 6 of the South Carolina Rules of Civil Procedure requires a minimum of ten days notice before a motion can be heard. Rule 6(d), SCRCP; Dedes v Strickland, 307 S.C. 152, 414 S.E.2d 132, 143 (S.C. 1992) ("[W]e construe the rule to require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to such hearing unless the exceptions stated in Rule 6(d), SCRCP, apply.").

Further, the Bolus Respondents have challenged the sufficiency of Thomas's Complaint from the very beginning of the litigation. The Bolus Respondents filed Motions to Dismiss in July of 2010, less than one month after the Complaint was filed. (R. pp. 27, 32-33, 38-41). Thomas filed three separate responses in opposition to the Motions to Dismiss on August 12, 2010, (R. pp. 28-31, 34-37, 42-50), less than thirty days after the Bolus Respondents filed their initial responsive pleadings. *See* Rule 15(a), SCRCP (providing for amendment as a matter of right within 30 days after a responsive pleading is served). Rather than amending as a matter of

right, or moving to amend in the seven months that passed after the Motions to Dismiss were filed, Thomas waited until five days before the *second* hearing before filing the Motion to Amend. (R. pp. 98-100).

Thomas's delay in filing his Motion for Leave to Amend is not excused by his status as a *pro se* litigant. "Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894, 897 (S.C. App. 2001) (*quoting* Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (S.C. App. 1988); *e.g.* McCall v. A-T-O, Inc., 276 S.C. 143, 276 S.E.2d 529, 530 (S.C. 1981) ("This Court has never held a layman to a lesser standard than attorneys.")).

Additionally, Section 15-36-100 does the allow a plaintiff to avoid dismissal by filing a Motion to Amend pursuant to Rule 15, SCRPC. The dismissal of a complaint for failure to file an expert affidavit is governed by Section 15-36-100, not Rule 15, SCRPC. To hold otherwise would allow a plaintiff to defeat the legislative intent underlying the contemporaneous filing requirement.

Accordingly, for all of the reasons stated above, the trial court properly dismissed the Complaint for failure to comply with Section 15-36-100, and the decision of the trial court should be affirmed.

II. THE STATUTE OF LIMITATIONS SHOULD NOT BE TOLLED.

Thomas makes the conclusory statement in his Brief of Appellant that the statute of limitations should be tolled. (App. pp. 232, 238, 240, 246) (Brief of Appellant, pp. 34, 40, 42, 48). Notably, assuming Thomas's cause of action accrued on July 10, 2008 as he alleges in his Complaint, Thomas had the option of filing a new action after his Complaint was dismissed, but decided instead to stand

on his initial Complaint and appeal. To the extent this issue is properly before the Court, tolling is not warranted under these circumstances.

A. Thomas Failed to Preserve the Tolling Issue for Appellate Review and Abandoned the Issue on Appeal.

As an initial matter, Thomas failed to request a specific finding from the trial court on the tolling issue in his Motion to Alter or Amend. (R. pp. 109-119). *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (S.C. 2000) (holding that, if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59(e) motion to alter or amend the judgment in order to preserve the issue for appellate review); *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (S.C. 2004) (“A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

Further, to the extent this issue was preserved for appellate review, it should be deemed abandoned. Thomas states in his Brief of Appellant that the statute of limitations should be tolled to enable him to file a new Complaint, but fails to make any specific arguments on the issue or cite any authorities to support his conclusory statement, or even set forth the issue in his Statement of the Issues on Appeal. *See* Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); *Gamble v. Int’l. Paper Realty Corp. of South Carolina*, 323 S.C. 367, 474 S.E.2d 438, 440 n. 1 (S.C. 1996) (declining to address issue not set forth in the statement of the issues on appeal); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 496 (S.C. App. 2004) (“[W]here an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal.”); *State v. Black*, 319 S.C. 515, 462 S.E.2d 311, 313 n.2 (S.C. App. 1995) (“[A]n exception to the trial court’s ruling will be deemed abandoned where the appellant fails to

specifically argue it in his brief. Moreover, a conclusory argument of an issue by appellant amounts to an abandonment of the issue.”) (internal citations omitted). Accordingly, this matter is not properly before the Court.³

B. Thomas’s Decision to File This Appeal Rather Than Initiate a New Action Does Not Warrant Tolling The Statute Of Limitations.

Thomas appears to be seeking tolling based on his misconception that the statute of limitations for a legal malpractice claim is two years rather than three. The statute of limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005); Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1, 4 (S.C. App. 2009); Berry v. McLeod, 328 S.C. 435, 444-45, 492 S.E.2d 794, 799 (S.C. App. 1997).

Thomas’s Complaint was dismissed for failure to state a claim. *See* S.C. Code § 15-36-100 (providing for dismissal for failure to state a claim). “Dismissal of a complaint does not bar a subsequent action brought before expiration of the statute of limitations if the dismissal is based merely on the insufficiency of the complaint.” Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869, 881 (S.C. 2006) (*citing* Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504, 505 (S.C. 1986); *see id.* (*citing* Thacker v. Bartlett, 785 N.E.2d 621, 624 (Ind. App. 2003) (dismissal for failure to state a claim is without prejudice because the complaining party may either file an amended complaint or stand upon complaint and appeal); *id.* (*citing* Swink v. Ernst & Young, 322 Ark. 417, 908 S.W.2d 660, 663 (Ark. 1995) (when trial court dismisses complaint pursuant to Rule 12(b)(6) for failure to state facts upon which relief can be granted, dismissal is without prejudice; plaintiff then has the election to plead further or appeal).

³ Thomas also cites various constitutional provisions and case law regarding causes of action that are not properly before this Court as they were neither pled in his Complaint nor preserved for appellate review, and are not material to the disposition of this appeal. *See* Brief of Appellant, p. 1 (state and federal constitutional claims), p. 36 (intentional infliction of emotional distress), pp. 43-44 (fraud), p. 43 (unfair trade practices), pp. 44-45 (federal trade commission), p. 45 (false advertising), p.46 (extrinsic fraud), p. 47 (civil conspiracy).

Thomas alleges in his Complaint that his cause of action accrued on July 10, 2008. (R. p. 10, ¶ 27). His Complaint was dismissed on April 19, 2011. (R. p. 4). Thus, Thomas had the option of simply filing a new action after April 19, 2011. Instead, Thomas filed a Motion to Reconsider (R. pp. 109-119), which was denied by an Order filed on May 23, 2011 (R. p. 5), after which he filed this appeal on June 23, 2011. All of this occurred within three years from the date that Thomas alleges in his Complaint that his cause of action accrued.

Thomas's decision to file this appeal rather than initiate a new action in the Court of Common Pleas does not warrant tolling the statute of limitations. See Spence, 628 S.E.2d at 881 ("When a complaint is dismissed without prejudice and the plaintiff is given the opportunity to file and serve an amended complaint, but instead chooses to appeal, the plaintiff ordinarily waives the right to amend his complaint."); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 599 S.E.2d 462, 466 (S.C. App. 2004) ("A pleading error by Respondents does not serve as a justification for tolling the statute of limitations. Respondents bear the burden of protecting their claim from procedural bars and may not use tolling to save their claim. No rule or statute exists which tolls statute of limitations periods based on improper pleadings.").

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1, 4 (S.C. App. 2009). Equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use. Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 117, 687 S.E.2d 29, 33 (S.C. 2009). The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. Id. at 32.

Thomas has made no attempts to show justification for tolling the statute of limitations in this case or otherwise address the issue except in conclusory fashion, and his failure to meet his burden should not be excused because of his lack of legal knowledge and training. *E.g. Hill*, 547 S.E.2d at 897 and *McCall*, 276 S.E.2d at 530, *supra*. South Carolina courts have declined to grant relief to litigants who have made similar arguments in attempts to set aside default judgments, *see Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (S.C. App. 1988) (lay employee's unfamiliarity with legal process was not "excusable neglect," such as would warrant setting aside judgment), and to avoid the statute of limitations. *See Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494, 496 (S.C. 2005) ("Ignorance of the statute of limitations is not an excuse for late filing, even when the Petitioner claims he did not learn of the statute because he was incarcerated in another state."); *Kelly v. Logan, Jolley, & Smith, L.L.P.*, 383 S.C. 626, 682 S.E.2d 1, 8 (S.C. App. 2009) ("Kelly's claim that she could not obtain the knowledge to place her on notice because she did not have other legal counsel to help her understand legal documents or proceedings is unconvincing as the statute of limitations is not tolled solely because a party is without counsel or has not fully developed a theory of recovery.").

Accordingly, to the extent Thomas's request for tolling was preserved for appellate review and is properly before this Court, Thomas has made no showing to justify the tolling of the statute of limitations in this case and his request for such relief should be denied.

III. DISMISSAL IS SUPPORTED BY ADDITIONAL GROUNDS IN THE RECORD.

The Bolus Respondents would respectfully point to two additional affirming grounds supported by the record. *See* Rule 220(c), SCACR (an appellate court may affirm upon any grounds appearing in the Record on Appeal).

Notably, the defects complained of below were expressly raised by the Bolus Respondents in their Motions to Dismiss. (R. pp. 27, 32-33, 38-41). During the time in which Thomas could have amended the Complaint as a matter of right, he instead prepared three responses in opposition to the Motions to Dismiss asserting that his Complaint was not defective. (R. pp. 28-31, 34-37, 42-50). Thomas never moved to amend the Complaint in the eight months that passed before the Motions to Dismiss were initially scheduled to be heard, or in the six weeks after the Motions were rescheduled, but instead waited until five days before the second hearing to file his Motion to Amend. (R. pp. 98-100). Because the trial court properly declined to hear Thomas's Motion to Amend, the question of whether the defects could have been cured by amendment are not material to the issue of whether these additional sustaining grounds support the trial court's decision to dismiss the Complaint.

A. Thomas Failed to Allege His Innocence.

In an action for legal malpractice evolving from a criminal matter, a complaint that fails to allege innocence is subject to dismissal for failure to state a cause of action. Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304, 306 (S.C. 2001). In Brown, the criminal defendant brought a legal malpractice claim against his trial attorneys following his successful application for post-conviction relief, alleging that but for the attorneys' negligent representation, "he would have fared better at trial and would not have been convicted through a plea of no contest or otherwise." Id. at 305. However, Brown did not specifically allege in his malpractice complaint that he was innocent of the crimes for which he was convicted. In affirming the trial court's order granting the attorneys' 12(b)(6) motion, the Supreme Court of South Carolina began by noting that "in an action for legal malpractice based on conviction of a crime the general standard is the

plaintiff must show innocence of the crime in order to establish liability.” *Id.* at 306. The Court then examined Brown’s complaint as follows:

Brown has not alleged he is innocent or even that he would have been acquitted if his Attorneys’ had not committed the alleged malpractice. Brown’s complaints do not allege facts that purport to show he is innocent of all the criminal charges filed against him. Therefore, *Brown’s failure to plead innocence is fatal to his cause of action.*

Id. (emphasis added).

The significance of the Supreme Court’s holding in Brown is even more apparent when read in conjunction with the opinion of the Court of Appeals, 338 S.C. 305, 526 S.E.2d 232 (S.C. App. 1999). In discussing the elements of a cause of action for legal malpractice, the Court of Appeals made a fundamental distinction between a “traditional legal malpractice action . . . involving an attorney’s representation of a client in a civil matter” and one involving a criminal conviction, noting that in the latter, “criminal guilt or innocence is relevant to pleading and proving a legal malpractice cause of action evolving from a criminal matter” and that a plaintiff “needs to prove innocence of the crime as an element to the cause of action.” *Id.* at 310. The Supreme Court specifically noted this was a correct statement of the law in affirming the decision of the Court of Appeals. 550 S.E.2d at 306.

The Brown decision sets forth a bright line requirement for pleading in criminal malpractice actions that a plaintiff must allege his innocence and set forth facts purporting to show his innocence. Failure to allege innocence amounts to failure to allege an essential element of a cause of action, and it is well-established that if a complaint omits a single element, it is facially defective and should be dismissed. *E.g. United Educational Distributors, LLC v. Educational Testing Service*, 350 S.C. 7, 564 S.E.2d 324, 330 (S.C. App. 2002) (dismissing cause of action for interference with prospective contract pursuant to Rule 12(b)(6) for failure to

allege the loss of an identifiable contract or expectation); Moore v. City of Columbia, 284 S.C. 278, 326 S.E.2d 157, 162-63 (S.C. App. 1985) (dismissing Section 1985 action for failure to allege discriminatory motive).

Accordingly, because Thomas failed to allege his innocence in the Complaint or set forth any facts purporting to show his innocence, his action was properly dismissed by the trial court.

B. Thomas Failed to Otherwise State a Cause of Action Against Keith Bolus or "Bolus & Bolus."

As an additional sustaining ground, Thomas's Complaint failed to state a cause of action against Keith Bolus or "Bolus & Bolus." The allegations in the Complaint solely relate to Tommy Bolus's representation of Thomas in the underlying criminal matter. (R. pp. 6-12). Thomas failed to set forth any allegations against Keith Bolus whatsoever. In fact, Keith Bolus is not even referenced anywhere in the Complaint other than in the caption. Thomas does not allege that he entered into an attorney-client relationship with Keith Bolus or otherwise set forth any allegations from which a cause of action against Keith Bolus can be inferred.

The fact that Thomas named "Bolus & Bolus" as an additional defendant does not warrant a different result. While Thomas attempted to make a factual issue out of whether an implied partnership exists, it was unnecessary to reach this issue because Thomas failed to allege anywhere in the Complaint that Keith Bolus is even affiliated with the non-existent entity "Bolus & Bolus," and neither Keith Bolus nor "Bolus & Bolus" appear in the correspondence and representation agreement that Plaintiff attached as an exhibit to the Complaint. (R. pp. 156-158). Simply naming Keith Bolus and "Bolus & Bolus" in the caption is not sufficient to state a cause of action against either.

Thomas acknowledges that he is required to plead ultimate facts which will be proven at trial, (R. pp. 29, 35, 49), but there are no facts pled in his Complaint which relate to or even

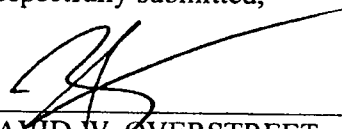
mention Keith Bolus, making it impossible to infer any cause of action against Keith Bolus individually or through the non-existent entity "Bolus & Bolus."

Accordingly, to the extent the decision of the trial court is not otherwise affirmed for the reasons set forth above, Thomas failed to state a claim Keith Bolus and the non-existent entity "Bolus & Bolus" and his purported claims against both were properly dismissed.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the decision of the trial court.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas,

Appellant,

V.

Bolus & Bolus,
Attorneys Keith Bolus, Officially,
Michael T. Bolus, Officially
and Individually,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

CLARK DAVID THOMAS
Appellant

BRCI / Murray A-267
4460 Broad River Road
Columbia, SC 29210

Pro se Appellant

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ARGUMENT

I.

The court erred in determining that the Respondents' conduct while representing Appellant in the underlying criminal matter could not have been determined within the ambit of common knowledge to have fallen below an acceptable standard of care in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

Please take notice that Thomas has consistently identified Respondent Michael Bolus by his legal name in all pleadings: for reasons unknown, Michael has elected to create the possibility of confusing this Court by referring to himself by his nickname of "Tommy." In the interest of congruity, Thomas will continue to identify him as "Michael Bolus," or Michael."

The Respondents have argued in their *Brief* that Thomas "set forth ten instances of allegedly negligent conduct in his Complaint," (Respondents Brief (R.B.) p. 8), which Thomas has graphically detailed therein his *Brief*. (Appellants Brief (A.B.) pp. 28-34). Each and every one of these ten acts of negligent conduct clearly constitute a cause of action pursuant to South Carolina Code § 15-36-100(C)(2) which provides that "[t]he contemporaneous filing requirement of subsection (B) is not required to support a pleading specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Defendant."

Be that as it may, the Respondents were not specific as to which obvious act of negligent conduct had been excluded from their *last ditch effort* to explain away Michael's blatant malfeasance, misfeasance, and nonfeasance. "If a[] [respondent] fails to respond to an issue in its brief, the [appellate] court may treat the failure to respond as a confession that the appellant's

Position is correct.” First Union Nat. Bank v. FCVC Comm., 469 S.E.2d 613, 617 (S.C. App. 1996). The Respondent’s lack of specificity as to which of the ten overt acts of negligent conduct that does not involve alleged “matters of professional judgment ... and the Rules of Professional Conduct,” (R.B. p. 8), is a confession that one of the causes of action Thomas has argued is correct and, does fall within the common knowledge exception. “[I]t is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for [demurrer] to be denied.” Hill v. York County Sheriff’s Dept., 437 S.E.2d 179, 182 (S.C. App. 1993).

The Respondents are also suggesting that Thomas is contradicting himself by “arguing that these are matters of common knowledge” because Thomas “specifically relied on [Tommy Bolus’s] knowledge and expertise regarding trial strategy [and] all decisions during the trial process.” (R.B. p. 9). This argument makes no sense as it appears the Respondents are implying that lawyers are not always retained for their knowledge and expertise: moreover, the authority they cited is not focused on the common knowledge exception.

The Respondents have also argued that because “South Carolina appellate courts have not had the opportunity to address the application of the common knowledge exception in the context of the alleged negligence arising out of an attorney’s trial tactics and strategy,” they were forced to implement the persuasive authority of other states to support their line of reasoning. (R.B. p. 9). This statement is in support of Thomas’ argument that his case is “a question of novel impression that should not be decided on demurrer.” Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347, 351 (S.C. App. 1986). (App. p. 239) (A.B. p. 41). Moreover, inasmuch as these persuasive authorities that have been cited by the Respondents are only similar in the direction that they are legal malpractice cases: these diverse decisions are focused on negligence

that is innocuous in comparison to that in the instant case. In rebuttal to the Respondents conflict of interest argument, Thomas' observation that Michael Bolus was "representing both sides of the adversarial fence ...," (App. p. 265) (R.B. p. 12), was not a call for expert testimony. Contrary to this assertion, Thomas was expressing a metaphorical conclusion based on the fact that Michael "confirmed that this was a conflict of interest during a conversation with Carol Ann Cook." (App. p. 227) (A.B. p. 29). Moreover, this acknowledged conflict of interest is explicitly detailed therein Thomas' *Brief*; and, the irrefutable expert affidavit of Michael Virzi confirms that there was indeed a conflict of interest when Michael and the *Bolus & Bolus Law Firm* accepted Thomas' ex-wife's, criminal case.

In light of these facts and binding authority, the *Order* dismissing this action should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice; and, the statute of limitations tolled to enable Appellant to file a new complaint.

ARGUMENT

II.

The court erred in failing to grant Appellant leave to amend and supplement the pleadings and to file an amended complaint; and, in granting the Respondents' motion to strike the affidavit of William Gary White, III, in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

The Respondents have argued that S.C. Code § 15-36-100(C) (1) and (C)(2) Precludes Thomas the opportunity to amend his *Complaint* with an expert affidavit, because, Thomas had not met the criteria of two exceptions in this statute. (App. p. 267) (R.B. p. 14). The Respondents have failed to observe that § 15-36-100(E) is a third exception, wherein, it is expressed that "[t]he trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires." Michael Verzi revealed in his affidavit that was attached to the *amended Complaint* his determination that Michael Bolus' and the *Bolus & Bolus Law Firm's* conduct fell below an acceptable standard of care. (App. p. 235) (A.B. p. 37). Standing alone, Virzi's conclusion obviously supports a finding that justice requires that Thomas should be granted leave to amend, because, Virzi's expert affidavit is six pages long and, exposes 11 egregious causes of action that clearly demand justice.

In arguing that the Court probably declined to entertain Thomas' *Motion for Leave to Amend*, the Respondents have recited that because Thomas filed his *Motion* five days before the *Motions to Dismiss* and *Motions to Strike* were heard: Rule 6(d), SCRCPP, prohibits motions from being heard that are not filed at least ten days prior to the hearing. (App. p. 268) (R.B. p. 15). In support of this argument, the Respondents cited a South Carolina Supreme Court decision from 1992: this otherwise binding authority lacks standing in this matter, because, in a case where an amendment

to the pleadings was granted by the lower court during the second day of trial, the Supreme Court held that “[t]he circuit court is to freely grant leave to amend a complaint when justice requires....” Lee v. Bunch, 647 S.E.2d 197, 200 (S.C. 2007).

The Respondents have also reasoned that in light of Thomas’ failure to amend his *Complaint* as a matter of right within 30 days after a responsive pleading is served and, because Thomas neglected to move to amend in the seven months that passed after the *Motions to Dismiss* were filed; and, waited five days before the second hearing before filing the *Motion to Amend*: that Thomas is not to be “excused by his status as a *pro se litigant*.” (R.B. p. 15). This argument is, again, supported by ordinarily binding case law; however, Thomas has time and again invoked United States Supreme Court rulings confirming that he is to be held to a lesser standard than an attorney. (A.B. p. 24). “When the United States Supreme Court enunciates a rule ..., that rule is binding upon state courts through the Supremacy Clause.” Keeler v. Mauney, 500 S.E.2d 123, 125 (S.C. App. 1998) (Citing Henry v. City of Rock Hill, 376 US. 776 (1964)).

The circumstances of Thomas’ failure to move for leave to amend during the seven months in question have been revealed in his *Brief*. Be that as it may and in distinguishing United Educational Distributors, LLC v. Educational Testing Service, 564 S.E.2d 324 (S.C. App. 2002), it should be duly noted that this Court was not asked to review the propriety of the trial court’s decision to allow the Plaintiff to file a *second* amended complaint some nine months after filing the original complaint.

In furtherance of the Respondent’s position in this issue, they have expressed that “[t]he dismissal of a complaint for failure to file an expert affidavit is governed by Section 15-36-100,

not Rule 15, SCRPC.” (App. p. 269) (R.B. p. 16). “[T]he power of the court to allow amendment, by correcting a mistake in ... any ... respect, is unlimited.” Coral Gables v. Palmetto Brick Co., 191 S.E. 337, 339 (S.C. 1937). “[T]he legislature has no power to take away powers specifically granted to this Court by the Constitution.” State v. Whitener, 81 S.E.2d 784, 786 (S.C. 1954). “[T]he decisions of the Supreme Court bind this Court as precedents. S.C. Const. Art. V. § 9.” Daniels v. City of Goose Creek, 431 S.E.2d 256, 260 (S.C. App. 1993). “[W]here there is a conflict between the statute and the State Constitution, the Constitution overrides the statute.” Anton v. South Carolina Coastal Council, 469 S.E.2d 604, 605 (S.C. 1996). “[T]he Supreme Court shall make rules governing the practice and procedure in all courts of the state.” Jean Toal, Appellate Practice in South Carolina at 7 (2nd Edition) (citing S.C. Const. Art. V §4).

In the instant matter and because of these binding authorities, it appears that there is a conflict between the Statute and the Constitution: when cast in the light of the Respondents argument that Section 15-36-100 overrides Rule 15, SCRPC. (App. p. 269) (R.B. p. 16). However, they did not cite any authority in support of this line of reasoning. This Court has consistently held that when a litigant “fails to cite authority in support of his argument, we consider the argument abandoned.” Feldman v. Feldman, 670 S.E.2d 669, 673 (S.C. App. 2008) citing Glasscock, Inc. v. U.S. Fid. & Guar. Co., 557 S.E.2d 689, 691 (S.C. App. 2001) “(holding statements made without supporting authority are deemed abandoned on appeal and are not presented for review).

In light of these facts and binding authority, the dismissal of this action should be reversed; the *Amended Complaint* should be admitted; the *Order* to strike the affidavit of William Gary White, III, should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

ARGUMENT III.

The court erred in granting Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus in violation of Appellant's right to due process: equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

The Respondents are relying on Thomas' failure to make a word-for-word declaration of his innocence to be a fatal flaw in his *Complaint*, and they have implemented the sole authority of Brown v. Theos. 550 S.E.2d 304 (S.C. 2001) to support their argument. (App. p. 274) (R.B. p. 21). In distinguishing this case, the Supreme Court determined that because "Brown's complaints do not allege facts that purport to show he is innocent of all the criminal charges against him ...[,] Brown's failure to plead innocent is fatal to his cause of action," *Id. at 306*. Moreover, Brown's failure to allege his innocence was hinged on his *nolo contendere* plea—which the Court decided was a plea of guilt.

In the instant case, these are not the circumstances. Thomas' complaints embrace confirmed facts that—commingled with his demand for a trial by jury and direct appeal—clearly reveal Thomas' innocence; and, there is not even a remote chance that Thomas will ever enter a guilty plea: even if that means that he will have to serve the 13 years remaining on his sentence. Furthermore, the Respondent's statement that Thomas' "[f]ailure to allege innocence amounts to failure to allege an essential element of a cause of action, and it is well-established that if a complaint omits a single element, it is facially defective and should be dismissed," (App. p. 275) (R.B. p. 22), is inapplicable on two points, because, the Court in *Brown, id.*, articulated an alternative to consider in lieu of alleging innocence; and, the case law supporting this line of reasoning does not stipulate that the failure to allege a single element would call for the dismissal of a complaint.

In response to the Respondent's argument that Thomas failed to state a cause of action against *Keith Bolus & Bolus & Bolus*, (R.B. p. 22): "inartfully drawn but meritorious pleadings are upheld against a demurrer challenging their legal sufficiency," Moore v. City of Columbia, 326 S.E.2d 157, 160 (S.C. App. 1985). In the present case, Thomas' *Complaint* inartfully names *the law firm of Bolus & Bolus* in paragraph 4—which Thomas, thereafter, designated *the law firm*: Thomas then proceeds to name *the law firm* in paragraphs 8-12, 18, and 27. Thomas has also factually revealed that Keith Bolus does practice law with *the law firm* with the proof of Internet Advertisements and photographic evidence. (R. p. 6-11; pp. 161-170). Moreover, the pleadings are undeniably meritorious.

In light of these facts and binding authority, the Order dismissing the Respondents should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

ARGUMENT IV.

The Respondents engaged in deceptive trade practices; and, participated with their attorneys in a civil conspiracy by the subornation of perjury constituting extrinsic fraud and fraud upon the court in their denial to practicing law as Bolus and Bolus and the Bolus Law Firm.

The Respondents have expressed their decision—in a footnote—not to present an argument against the issues that Thomas raised herein. (App p. 271) (R.B. p. 17). “If a [] [respondent] fails to respond to an issue in its brief, the [appellate] court may treat the failure to respond as a confession that the appellant’s position is correct.” *First Union, supra*. When a litigant “fails to cite authority in support of his argument, we consider the argument abandoned. *Feldman, supra*. “[S]tatements made without supporting authority are deemed abandoned on appeal and are not presented for review.” *Glasscock, supra*. In light of these authorities, it appears that the Respondents have confessed to the truth of Thomas’ allegations and, waived the opportunity to dispute them: however, because the issues raised in this argument are directly connected to the Respondent’s success in having Thomas’ *Complaint* dismissed; and, exposes that officers of the court have perpetrated crimes against the public and the courts, Thomas prays that this Court will grant the relief requested herein.

In light of these facts and binding authority, criminal charges should be placed against the Respondents for making *intentionally untrue statements in advertising*; the Respondents and their respective attorneys should be found guilty of fraud and sanctioned accordingly; the dismissal of this action should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint.

CONCLUSION

The lower court erred in failing to grant Appellant leave to amend and supplement the pleadings and to file the *Amended Complaint*; in granting the Respondents' motion to strike the affidavit of William Gary White, III; and, in granting the Respondents' motions to dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus: in violation of Appellant's right to due process; equal protection of the laws; to be free from discrimination; a speedy remedy; access to the courts; and, a trial by jury as guaranteed by Article I, §§ 3, 9, 22, and 25 of the South Carolina Constitution; and, Fourteenth Amendment to the United States Constitution.

Furthermore, the Respondents did engage in deceptive trade practices; and, participated with their attorneys in a civil conspiracy by the subornation of perjury constituting extrinsic fraud and fraud upon the court in their denial of practicing law as *Bolus & Bolus* and the *Bolus Law Firm*. In light of these facts and binding authority: the *Order* dismissing the Respondents should be reversed and, this case should be remanded to the Court of Common Pleas for a trial by jury; or, this action should be dismissed without prejudice and, the statute of limitations tolled to enable Appellant to file a new complaint; and, for such other relief as this Court deems just and proper.

Respectfully submitted,

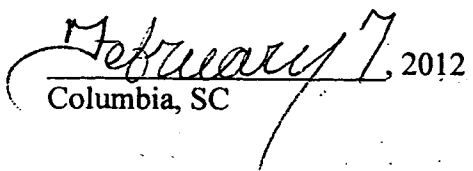


Clark D. Thomas #187845

BRCI / Murray A-267

4460 Broad River Road

Columbia, SC 29210

 February 7, 2012
Columbia, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas,

Appellant,

V.

Bolus & Bolus,
Attorneys Keith Bolus, Officially,
Michael T. Bolus, Officially
and Individually,

Respondent.

CERTIFICATE OF COMPLIANCE

I hereby certify that this *Final Reply Brief* of Appellant complies with Rules 211 (b),
SCACR.

February 7, 2012
Columbia, SC

Respectfully submitted,

Clark D. Thomas

Clark D. Thomas #187845

BRCI / Murray A-267

4460 Broad River Road

Columbia, SC 29210

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Clark D. Thomas, Appellant,

v.

Bolus & Bolus and Attorneys Keith Bolus, Officially,
and Michael T. Bolus, Officially and Individually,
Respondents.

Appellate Case No. 2011-194846

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2013-UP-034
Submitted November 1, 2012 – Filed January 16, 2013

AFFIRMED

Clark D. Thomas, pro se.

Michael Baxter McCall and David W. Overstreet, both of
Carlock Copeland & Stair, LLP, of Charleston, for
Respondent Keith Bolus; and Michael T. Bolus, of North
Charleston, pro se.

PER CURIAM: Clark Thomas appeals the trial court's order granting Bolus's motion to dismiss and declining to address Thomas's motion to amend. We affirm pursuant to Rule 220(b), SCACR.

1. We find the trial court did not err in granting Bolus's motion to dismiss. Thomas failed to state a claim upon which relief may be granted because he did not plead he was innocent of the underlying criminal charges. *See Brown v. Theos*, 345 S.C. 626, 629-30, 550 S.E.2d 304, 306 (2001) (holding the trial court did not err in granting attorneys' motion to dismiss pursuant to Rule 12(b)(6), SCRCR, because the client's complaint did not allege he was innocent of the criminal charges filed against him). Thomas also argues he was not required to submit an expert affidavit pursuant to section 15-36-100 of the South Carolina Code (Supp. 2011) because the legal malpractice claim fell within the ambit of common knowledge.

Alternatively, Thomas argues the trial court erred in striking the expert affidavit of William White. It is not necessary to address these issues because the trial court properly dismissed Thomas's complaint for failure to state a cause of action. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (recognizing an appellate court need not address remaining issues when resolution of one issue is dispositive).

2. We find the trial court did not err in declining to consider Thomas's motion to amend his complaint because he did not file the motion ten days prior to the hearing. *See* Rule 6(d), SCRCR ("A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court."). Additionally, Thomas's proposed amended complaint failed to state a cause of action because he did not allege facts that show he is innocent of all criminal charges filed against him. *See Brown*, 345 S.C. at 630, 550 S.E.2d at 306 ("[The] complaints do not allege facts that purport to show he is innocent of all the criminal charges filed against him. Therefore, [the plaintiff's] failure to plead innocence is fatal to his cause of action."); *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153-54, 723 S.E.2d 835, 841 (Ct. App. 2012) (holding the trial court properly denied the plaintiff's motion to amend his complaint because the plaintiff failed to cite any new factual allegations that would impact the issue).

3. We find Thomas failed to preserve his remaining arguments for review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have

been raised to and ruled upon by the trial [court] to be preserved for appellate review.").

AFFIRMED.¹

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas, ... Appellant,

V.

Bolus & Bolus
Attorneys Keith Bolus, Officially
Michael T. Bolus, Officially
and Individually, ... Respondent.

**PETITION FOR REHEARING
EN BANC**

Pursuant to Rules 219 and 221(a), SCACR, Clark D. Thomas, Appellant in the above-captioned appeal, respectfully seeks that this Court, *en banc*, reviews with specificity the following points that may have been overlooked or misapprehended and, consideration by the full court is necessary to secure or maintain uniformity of its decisions:

I.

Appellate Findings

This Court has found that Thomas failed to state a claim upon which relief may be granted because he did not plead he was innocent of the underlying criminal charges. (Citing *Brown v. Theos*, 345 S.C. 626, 629-30, 550 S.E.2d 304, 306 (S.C. 2001). This Court also observed that Thomas argues (1) he was not required to submit an expert affidavit pursuant to section 15-36-100 of the South Carolina Code (Supp. 2011) because the legal malpractice fell within the ambit of common knowledge; and (2), the trial court erred in striking the expert affidavit of William White. It should be duly noted that Thomas' *Memorandum Opposing Motion to Dismiss Michael Bolus, Keith Bolus, and Bolus & Bolus* was filed April 1, 2011, with the expert affidavit of Michael J. Virzi attached thereto, (R.p. 90), and it was not stricken from the record. (R.pp. 183-188). However, this Court determined it was not necessary to address these issues because the trial court properly dismissed Thomas' complaint for failure to state a cause of action.

II.

Ten Day Notice

This Court further held that the trial court did not err in declining to consider Thomas' motion to amend his complaint because he did not file the motion ten days prior to the hearing (citing *Rule 6(d), SCRPC*). In response and because of the following recent developments: *judicial notice* should be taken that on September 11, 2012, while prosecuting a divorce from the alleged victim, the court denied Thomas' request pursuant to Rule 6(d), SCRPC, that Attorney Edward L. Knisley, Jr., not be heard on his motion filed five days prior on September 6, 2012, to quash the subpoena on Scarlett Wilson. (See pp. 9-13). *Judicial notice* should also be taken of (App. PP. 305-309)

the fact that during the divorce trial on September 20, 2012: Attorney Joseph K. Qualey introduced his motion filed two days prior on September 18, 2012, to quash the subpoena on Dr. William Maguire, MD. Again, Thomas cited Rule 6(d) with the inclusion of binding case law (App. pp. 310-319) seeking that Qualey's motion not be heard; this request was denied as well. (See pp. 14-23). An appeal was filed December 17, 2012, on these issues, *inter alia*, and assigned Case No.: 2012-213714.

Due Process & Equal Protection

Because of the foregoing decisions by the divorce courts to circumvent Rule 6(d), SCRCP: this Court's affirmation of the trial court's decision to disregard Thomas' motion to amend pursuant to Rule 6(d), SCRCP, appears to suggest he is being denied due process and equal protection of the laws; in addition to being held to a higher standard than lawyers in violation of the *Supremacy Clause*. (See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)(holding that as a *pro se* litigant, the plaintiff's pleadings are accorded liberal construction, and held to a less stringent standard than formal pleadings drafted by lawyers.).

Amended Pleadings

Moreover, Thomas sought to amend the complaint with his pleading of innocence of all the underlying criminal charges and the expert affidavit of Virzi to conform to the evidence pursuant to, *inter alia*, Rule 15(b), SCRCP:

““If evidence is objected to at trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.””

Additional evidence of an infringement upon Thomas' right to due process and equal protection of the laws is revealed in the language of Rule 45(3)(A), SCRCP, wherein it states a *timely motion* must be filed when seeking to quash a subpoena and Rule 15(b), SCRCP, articulates the court, at any time, may allow the pleadings to be amended and *shall* do so freely. (See *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14, 18 (S.C. 2000)(holding use of word *shall* in a statutory provision indicates the provision is mandatory.).

Abuse of Discretion

Furthermore, the Respondents failed to state how they were prejudiced by the amended pleadings and there was no finding thereof; which suggests the trial court abused its discretion in disregarding Thomas' motion to amend. (See *Soil & Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 361 S.E.2d 779 (Ct. App. 1987)(holding trial court abused its discretion in denying amendment to pleadings to conform to proof where trial judge made no finding of prejudice and party opposing amendment made no showing of any; under Rule 15(b), amendments to conform to proof should be liberally allowed when no prejudice to opposing party will result therefrom.).

Moreover, Virzi's expert affidavit clearly confirms justice requires Thomas be allowed to amend the pleadings. (R.pp. 183-188). (See *Duncan v. CRS Serrine Engineers, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (S.C.App. 1999)(holding that rule providing leave to amend pleadings shall be freely given when justice so requires and does not prejudice any other party, prejudice in question is lack of notice that new issue is going to be tried, and lack of opportunity to refute it.). Thomas did not seek to raise any new issues; however, this Court has allowed new issues to be amended to the pleadings up to two days prior to trial. (See *Griffith v. Griffith*, 332 S.C. 630,

506 S.E.2d 526 (S.C.App. 1998)(assenting to granting of husband's motion to amend pleadings to allege adultery two days before trial.).

III.

Alleging Innocence

This Court concluded that Thomas' proposed amended complaint failed to state a cause of action because he did not allege facts that show he is innocent of all criminal charges filed against him. Be that as it may, Thomas' amended complaint set forth numerous allegations of fact showing he is innocent of all charges in the underlying criminal matter by establishing reasonable doubt. (R.pp. 107-108). To wit, among other things, the Respondents:

1. Suppressed evidence from witnesses that would have corroborated Thomas' testimony that the alleged victim was consensually subjected to the use of a stun gun during sex, had fabricated the underlying criminal allegations because Thomas wanted a divorce, then stalked him seeking to reunite despite his having been placed on GPS monitoring to preclude contact with her;
2. Failed to impeach the alleged victim by revealing over 46 contradictions therein her testimony and sworn statements; and,
3. Failed to procure medical records that would have confirmed the alleged victim gave false testimony regarding injuries she claimed Thomas subjected her to.

Because the jury in the underlying criminal trial was instructed that Thomas' guilt or innocence was hinged upon reasonable doubt and he is prepared to present the foregoing evidence that the alleged victim is a habitual liar, this Court should find that Thomas has

sufficiently alleged facts supporting his innocence. (See *Stroud v. Riddle*, 260 S.C. 99, 194 S.E.2d 235 (S.C. 1973)(holding that plaintiff is required to plead ultimate facts which will be proven at trial, not the evidence which will be used to prove the facts.)). However, Thomas wishes to further amend the pleadings to conform to the evidence if this Court so requires.

IV.

Preservation

In finality, this Court articulated that Thomas failed to preserve his remaining arguments for review. In response: the trial court accused Thomas of disrespect and exploiting the proceedings to foist a personal vendetta against the Respondents merely because Thomas sought to invoke his due process right to a less stringent standard than lawyers. (R.p. 126, lines 17-25). Thereafter, the trial court disregarded every issue Thomas argued and the Respondent lawyers prevailed on all points raised despite Thomas' efforts time and again to amend the pleadings to conform to the evidence. (R.p. 125, lines 22-25—p. 126, lines 1-6; p. 134, lines 20-23; p. 135, lines 3-17; p. 136, lines 3-5; p. 139, lines 16-19; p. 144, lines 2-6). (See *State v. Pace*, 316 S.C. 71, 447 S.E.2d 186, 187 (S.C. 1994)(holding trial judge must act with absolute impartiality in the performance of judicial duty.)).

In light of the trial court's conduct, this Court should find all issues raised by Thomas, to include tolling of the statute of limitations and constitutional infringements are preserved for appellate review. (See Jean Toal, Shahin Vafai, Robert A. Muckenfuss, *Appellate Practice in South Carolina* at 64 (2nd Edition 2002). ("The failure to timely object does not waive an issue for appellate review where such an objection would have been futile.")).

Moreover, Thomas' issue of fraud was raised in his (1) *Reply to Defendant's Motion to Dismiss Bolus & Bolus*, (R.pp. 42-47); (2) *Memorandum Opposing Motion to Dismiss Michael*

Bolus, Keith Bolus, and Bolus & Bolus, (R.pp. 96-97); (3) trial testimony, (R.p. 146, lines 3-25—p. 147, lines 1-11); and (4), *Motion to Alter or Amend a Judgment to Include Specific Findings of Fact and Conclusions of Law*. (R.p. 115). Furthermore, Thomas confirmed the trial court would review all issues therein these aforesaid pleadings, (R.p. 135, lines 3-21); thereby, preserving all issues raised for appellate review. (R.pp. 109-110). Therefore: because of Thomas' status as an unlearned, *pro se* appellant and his issue of fraud is symbiotic to deceptive trade practices, this Court should consider this and all other issues ripe for appellate review.

V.

Prayer for Relief

In light of the belief that consideration of the full court is necessary to secure or maintain uniformity of its decisions; and, because this Court may have overlooked or misapprehended the aforementioned points that Thomas should (1) be held to a less stringent standard than lawyers pursuant to the *Supremacy Clause*; (2) be determined to have preserved all issues for appellate review; (3) be considered to have confirmed reasonable doubt showing he is innocent of all the underlying criminal charges in the proposed amended complaint or, be allowed to file a second complaint; and (4), be permitted to amend the pleadings to conform to the evidence due to no finding of prejudice and because the merits of the action will be subserved thereby. Therefore, Thomas respectfully seeks a rehearing *en banc*.

WHEREFORE, Appellant prays this Court grant the relief requested; and, for such other relief this Court deems just and proper.

Respectfully submitted,

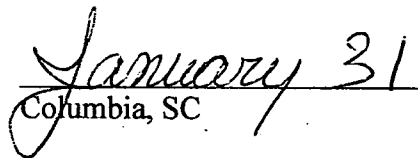


Clark D. Thomas #187845

BRCI / Moultrie A-2087.

4460 Broad River Road

Columbia, SC 29210

 January 31, 2013
Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLARK D. THOMAS,

Plaintiff,

Versus

RACHEL M. CROWLEY,

Defendant:

FILEDIN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

2012 SEP -6 PM 4:06

JULIE J. ARMSTRONG
CLERK OF COURT**MOTION TO QUASH SUBPOENA**

BY _____

Docket No. 2010-DR-10-4251

TO: CLARK D. THOMAS:

YOU WILL PLEASE TAKE NOTICE that non-party Scarlett A. Wilson, Esquire, Solicitor of the Ninth Judicial Circuit, will move pursuant to Rule 45(c), SCRCP, through her undersigned counsel, as soon as counsel may be heard, for an Order quashing Plaintiff's Subpoena commanding Solicitor Wilson's appearance and testimony in the above Family Court action, which is entirely unrelated to the criminal prosecution of Plaintiff for which he is currently incarcerated, on the grounds that any testimony of Solicitor Wilson will not be relevant to the pending Family Court action, may require testimony that is protected and/or privileged, and will subject Solicitor Wilson to undue burden.

NOTICE OF HEARING

A HEARING IS SCHEDULED

ON THE 11 DAY OF Sept 2012AT 9:30 AM PM

IN THE FAMILY COURT OF CHARLESTON COUNTY

COUNTY OF CHARLESTON

JOSEPH DAWSON, III, County Attorney

BERNARD E. FERRARA, JR., Deputy County Attorney

EDWARD L. KNISLEY, JR., Deputy County Attorney

AUSTIN A. BRUNER, Assistant County Attorney

BRADLEY A. MITCHELL, Assistant County Attorney

JOHANNA S. GARDNER, Assistant County Attorney

CHARLESTON COUNTY ATTORNEY'S OFFICE

Lonnie Hamilton, III Public Services Building

4045 Bridge View Drive

North Charleston, SC 29405

(843) 958-4010

ATTORNEYS FOR THE HON. SCARLETT A. WILSON

September 6, 2012

North Charleston, South Carolina

1 **THE COURT:** Okay. Larry -- who is Larry Ballard?

2 **MR. THOMAS:** Your Honor, Larry Ballard is the CEO
3 of the Alternative Incarcerations Method. He monitored
4 my satellite, a condition of my bond at a time that's
5 relevant to the case. And actually --

6 **THE COURT:** All right. Hold on. I just wanted to
7 know who he is right now.

8 **MR. THOMAS:** Well, there is one for the defendant
9 also.

10 **THE COURT:** Okay.

11 **MR. THOMAS:** Yes, sir. They were filed yesterday.
12 I didn't --

13 **THE COURT:** All right. Well, I can't hear any
14 motions that were filed yesterday.

15 **MR. THOMAS:** Yes, sir.

16 **THE COURT:** There's obviously been no service, so
17 those -- if they are filed appropriately, they will be
18 heard on the 20th before the trial begins.

19 **MR. THOMAS:** On that note, and I presume that
20 you're applying Rule 6 (D) with regard to not later
21 than ten days before notice of -- before a hearing, the
22 motions filed by Kelly and Ms. Wilson's representative,
23 I got notice of Ms. Wilson's yesterday. He filed it on
24 the 6th. So I would -- that leads me to believe that
25 motion could not be heard as well.

1 **THE COURT:** All right. Hold on. I -- I want to
2 take care of Ms. Wilson's attorney first because it's
3 going to be easy. What reason do you want Ms. Wilson
4 to be here?

5 **MR. THOMAS:** Oh boy, based --

6 **THE COURT:** I --

7 **MR. THOMAS:** It's in my pleadings, and if that is
8 not substantial, I'm not going to add anything. Wait a
9 minute, I will do this. I will do this. I oppose that
10 motion being heard today on rule 6 (D) so I can have
11 time to think about it because it's not later than ten
12 days --

13 **THE COURT:** That motion is denied.

14 **MR. THOMAS:** Okay.

15 **THE COURT:** I'm assuming you're moving for a
16 dismissal of Ms. Wilson and discovery because it's not
17 relevant to the issues before the court?

18 **MR. KNISLEY:** We are, Your Honor. Additionally,
19 much of the material that he requested in his subpoena
20 is not within the custody or control of the Solicitor's
21 Office. And then some of the items he requested are
22 either attorney work product or otherwise privileged.

23 **THE COURT:** Well, they all go back to the criminal
24 conviction.

25 **MR. KNISLEY:** They do, Your Honor.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

FILED

IN THE FAMILY COURT
 9th JUDICIAL CIRCUIT

Case No: 2010-DR-10-4251

2012 SEP 12 PM 1:48

Ex parte:

Scarlett A. Wilson,
 In her official capacity as 8th
 Ninth Circuit Solicitor,

JULIE ARMSTRONG
 CLERK OF COURT

In Re:

CLARK D. THOMAS,

Plaintiff,

versus

RACHEL M. CROWLEY,

Defendant.

**ORDER ON NON-PARTY
 MOVANT'S MOTION TO
 QUASH SUBPOENA**

Date of Hearing: September 11, 2012
 Trial Judge: Henry T. Woods
 Attorney for Non-Party Movant: Edward L. Knisley, Jr.
 Plaintiff's Atty: *Pro se*
 Defendant's Atty: Laree A. Hensley
 Court Reporter: Sharon Jones

THIS MATTER came before me pursuant to a Motion to Quash filed by counsel for the Hon. Scarlett A. Wilson, Ninth Circuit Solicitor, on September 6, 2012. Present in the Courtroom were the Plaintiff, appearing *pro se*, Laree A. Hensley, counsel for the Defendant, and Deputy Charleston County Attorney Edward L. Knisley Jr., counsel for non-party Solicitor Wilson.

The Court, having heard the arguments of the *pro se* Plaintiff and arguments of counsel for Solicitor Wilson, now makes the following Findings of Fact and Conclusions of Law:

30
 (2/1/12)

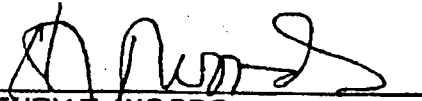
#1
 [Signature]

1. Plaintiff served a Subpoena dated August 10, 2012 on Ninth Circuit Solicitor Scarlett A. Wilson, commanding Solicitor Wilson's appearance and testimony at a date-certain trial on September 20, 2012, and commanding the production of certain materials.
2. Solicitor Wilson's presence and testimony would be irrelevant, would constitute an undue burden, and would require testimony that is protected or otherwise privileged.
3. The Subpoena requests materials that are not within the custody or control of the Solicitor, which are irrelevant, constitute attorney work product, or are otherwise protected.

Based on the above Findings of Fact and Conclusions of Law, it is hereby
ORDERED, ADJUDGED AND DECREED that Plaintiff's Subpoena
directed to the Hon. Scarlett A. Wilson is QUASHED.

#2 Charleston, S.C.

September 4, 2012


HON. HENRY T. WOODS
PRESIDING JUDGE,
CHARLESTON COUNTY FAMILY COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CLARK D. THOMAS,

vs.

RACHEL M. CROWLEY,

Defendant.

FILED
) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
2012 ~~2010~~ **2010** ~~2010~~ **2010** DR-10-4251

JULIE J. ARMSTRONG
CLERK OF COURT

MOTION TO QUASH

BY) **PLAINTIFF'S NON-PARTY SUBPOENA**
) **TO DR. WILLIAM MAGUIRE, M.D.**

NOTICE OF HEARING

A HEARING IS SCHEDULED
ON THE ____ DAY OF ____ 20 ____
AT ____ AM/PM
IN THE FAMILY COURT OF CHARLESTON COUNTY

Pursuant to Rules 2 and 7 of the *South Carolina Rules of Family Court* and Rules 26, 30 and 45 of the *South Carolina Rules of Civil Procedure*, Dr. William Maguire, M.D., by and through counsel, hereby moves to quash the non-party subpoena issued by *pro se* plaintiff Clark D. Thomas. As grounds for the motion Dr. Maguire shows as follows:

1. The above-styled action appears to be a divorce proceeding filed *pro se* by Clark D. Thomas. Furthermore, upon information and belief, Plaintiff is an incarcerated person and has attempted to issue many non-party subpoenas in this action.

2. Dr. Maguire is a practicing physician and not a party to this action. As a non-party physician, Dr. Maguire is entitled to the protections provided by the *South Carolina Rules of Family Court* and the *South Carolina Rules of Civil Procedure*.

3. South Carolina law absolutely and unequivocally provides that a party issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense upon a non-party witnesses. SCRCP 45(c)(1).

4. Furthermore, Rule 30(i) SCRCP provides the customary and appropriate vehicle for obtaining testimony of non-party physicians. Rule 7 of the *South Carolina Rules of Family Court* further attempts to protect physicians from the arbitrary issuance of non-

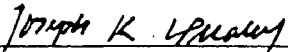
party subpoenas by allowing doctors to provide general statements regarding treatment without the necessity of appearing and giving live testimony. Rule 7, SCRFC.

4. In this matter, it appears that the subpoena was arbitrarily issued and not served in compliance with Rule 45, and Plaintiff did not provide the required non-party witness fee. Furthermore, Plaintiff has failed to specify with any reasonable degree of particularity what documents or information are being demanded from the non-party witness.

5. Finally, and perhaps most important, Dr. Maguire will be out of state and unavailable to appear at the hearing on September 20, 2012, and as such, the subpoena presents an unreasonable burden to Dr. Maguire.

WHEREFORE, THE PREMISES CONSIDERED, Dr. Maguire respectfully requests that the Court issue an Order quashing the non-party subpoena.

QUALEY LAW FIRM



JOSEPH K. QUALEY, ESQ.
ROBERT G. JONES, ESQ.
23 Broad Street
Charleston, South Carolina 29401
(843) 577-3434
*Attorneys for non-party
Dr. William Maguire, M.D.*

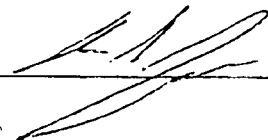
This the 18th day of September, 2012
Charleston, South Carolina.

CERTIFICATE OF SERVICE

Pursuant to the *South Carolina Rules of Civil Procedure*, I hereby certify that a copy of the foregoing Motion to Quash has been served upon the following this the 18th day of September 2012.

Clark D. Thomas #187845
BROAD RIVER CORRECTIONAL INSTITUTION
4460 Broad River Road
Columbia, South Carolina 29210
Pro Se Plaintiff

LAREE A. HENSLEY, ESQ.
1495 Remount Rd.
N. Charleston, South Carolina 29406
Attorney for Defendant



1 Dr. McGuire to have his subpoena quashed. I'd be glad
2 to hear your response to that, sir.

3 MR. THOMAS: Thank you, Your Honor.

4 Dr. McGuire was served on the 9th day of August.
5 So we have got about 40 days there.

6 The purpose of my serving him with the subpoena
7 was in response to my interrogatories defendant alleged
8 that she was treated for panic attacks and anxiety
9 related to the allegations that I brutally beat her,
10 raped her, kidnapped her, a number of other things.

11 So it made it a crucial element in the defense
12 they had. I'm also suing on the grounds of physical
13 cruelty, habitual drunkenness.

14 His testimony goes towards state of mind. And
15 pursuant to Dedes versus Strickland, that's 414 S.E.2d
16 132, the pinpoint is 133, decided in the Supreme Court
17 in 1992, that a notice of a hearing shall not be, or
18 motion, a written motion shall not be served not later
19 than 10 days. And that's in accordance with Rule 6(D)
20 of the South Carolina Rules of Civil Procedure.

21 He has had 40 days to accommodate to make this
22 motion to quash the subpoena. I also have grounds on
23 the other ones that were quashed, they were in
24 violation of rule 6(D) as well. Of course we will
25 address that in another moment if we may, if it pleases

1 the Court.

2 Furthermore, it is my understanding that Dr.
3 McGuire made contact with my mother, she is here to
4 testify, stating that he was a medical professional and
5 he shouldn't be required.

6 I sought medical records in the evasive and
7 incomplete answers that I was provided by the defendant
8 with regard to the prior medical treatment, she more or
9 less just told me to subpoena the records and get them
10 yourself. There should be a copy of the
11 interrogatories up there.

12 But at any rate --

13 THE COURT: She told you? Who is she, Mr.
14 Thomas?

15 MR. THOMAS: I'm sorry, refresh my memory?

16 THE COURT: You said, she told me to subpoena
17 the records.

18 MR. THOMAS: Defense counsel, Ms. Hensley
19 enlightened me to -- told me to subpoena the records
20 themselves. I don't have the -- I can pull the
21 pleadings. Of course you have a copy of them yourself.

22 THE COURT: Did you subpoena the records or did
23 you just subpoena the doctor?

24 MR. THOMAS: I just subpoenaed the doctor for
25 his testimony. And like I said, he's had 30 or 40

1 days. His first excuse to my mother was that he was a
2 medical professional and he should not be required to
3 testify. Well I didn't bring him into the case, you
4 know of course defense counsel did.

5 And he is -- and also I have concerns that there
6 was contact between Hensley and Dr. McGuire. She gave
7 him -- Defense Counsel Hensley gave Dr. McGuire my
8 mother's phone number and he contacted her with these
9 allegations or these statements that he is a
10 professional and he shouldn't have to come.

11 It is my belief that if he had a vacation
12 scheduled for Italy, it wouldn't have been done on the
13 last moment, and most certainly he would have had
14 plenty of time to put together a proper and timely
15 motion to quash the indictment -- or excuse me, the
16 subpoena.

17 In light of the circumstances as they stand,
18 that he is allegedly in Italy, I would request that
19 this Court allow testimony to proceed through the
20 witnesses that are in appearance, and that we would
21 recess the proceedings until such time as Dr. McGuire
22 can be brought forth.

23 While of course the law does allow me the
24 opportunity to seek that he is found in contempt of
25 Court, I would seek that we just get his testimony, or

1 in addition to these statements, I believe I haven't
2 even received a copy of the motion yet, so I haven't
3 even been served of it. So it's impossible for me --

4 THE COURT: Do you have a copy you can give to
5 Mr. Thomas?

6 I don't mean to interrupt you, sir.

7 MR. QUALEY: Yes, ma'am. We will give him one.

8 MR. THOMAS: If I may continue?

9 THE COURT: I thought you wanted a copy?

10 MR. THOMAS: Oh, I do, but there was a comment I
11 made on it.

12 THE COURT: Sure.

13 MR. THOMAS: From my understanding he eluded to
14 the fact that I shouldn't -- I could have obtained a
15 statement, or something to that effect. But I mean I
16 never received any offer of concession to what I was
17 trying to get out of Dr. McGuire.

18 So based on those facts, and the untimeliness of
19 the motion, I would request that this Court deny the
20 motion to quash, and recess the proceeding following
21 the testimony of the witnesses present until such time
22 as he can be compelled to attend, or otherwise provide
23 me with the information that I seek.

24 MS. HENSLEY: And, your Honor, if I could just
25 be heard briefly?

1 is not relevant and therefore I will grant the request
2 to quash the subpoena.

3 Independently, the \$25 witness check was not
4 attached to the subpoena so it is defective. And there
5 is a prima facia showing of defectiveness and the
6 subpoena is independently quashed on that ground also.

7 You have an order, sir?

8 MR. QUALEY: May I approach?

9 THE COURT: Yes, sir.

10 MR. QUALEY: Judge, I'll take it downstairs and
11 file it.

12 THE COURT: Okay. Thank you, sir.

13 MR. QUALEY: Have a nice day. Nice to see you.

14 THE COURT: Thank you, sir.

15 MR. THOMAS: Your Honor, if it pleases the
16 Court.

17 THE COURT: Yes, sir.

18 MR. THOMAS: I am prepared to make reparation to
19 pay each witness \$25 today. I would really hate to see
20 all of my witnesses be turned away because of an
21 inadvertent error.

22 THE COURT: Mr. Thomas, as far as I am aware
23 there are no other motions to quash subpoenas that have
24 been filed. So let us plan to address each one as it
25 occurs. Can we do that?

FILED

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
 COUNTY OF CHARLESTON)
 2012 SEP 20 AM 1:00 PM) THE NINTH JUDICIAL CIRCUIT
) CASE NO: 2010-DR-10-4251

CLARK D. THOMAS,

JULIE ARPIBONG
CLERK OF COURT

vs.

BY

ORDER ON NON-PARTY
 MOVANT'S MOTION TO
 TO QUASH SUBPOENA

RACHEL M. CROWLEY,

Defendant.

3c / JAC (81)

THIS MATTER came before me pursuant to a Motion to Quash filed by counsel for the non-party, Dr. William Maguire, M.D. Present in the Courtroom were the Plaintiff, Laree A. Hensley, Esq., counsel for the Defendant; and Joseph K. Qualey, Esq., counsel for Dr. Maguire.

The Court having heard the arguments of the parties now makes the following Findings of Fact and Conclusions of Law.

1. Plaintiff filed this matter as a domestic proceeding. Plaintiff is incarcerated and representing himself *pro se*. Plaintiff attempted to serve a Subpoena on Dr. William Maguire, M.D., commanding Dr. Maguire to appear at trial to give testimony and produce "All Medical Records On Rachel M. Crowley."

2. It appears that Plaintiff has already issued a deluge of non-party subpoenas to various non-parties who could have any possible connection, however remote, to the Defendant. And the Court has previously issued a ruling determining such subpoena(s) are improper.

3. South Carolina law absolutely and unequivocally provides that a party issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense upon non-party witnesses. SCRCP 45(c)(1).

4. Moreover, rule 7 of the *South Carolina Rules of Family Court* further attempts to protect physicians in particular from the arbitrary issuance of non-party subpoenas. Likewise, rule 30(i) SCRCP provides a customary vehicle for obtaining testimony of non-party physicians.

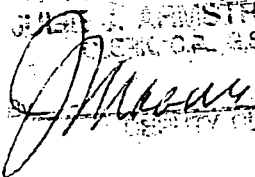
5. Based on the controlling law and the motions, briefs and arguments of the parties and counsel, the Court finds that Plaintiff's subpoena was arbitrarily issued and not served in compliance with Rule 45. Furthermore, it appears that Dr. Maguire is unavailable to appear in person in this matter; and Dr. Maguire's presence and testimony would be irrelevant and would constitute an undue and unreasonable burden upon the non-party.

Based on the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff's Subpoena directed to the non-party Dr. William Maguire, M.D., is QUASHED.

Charleston, S.C.
September 20, 2012


PRESIDING JUDGE
CHARLESTON COUNTY FAMILY COURT

ATTEST: A TRUE COPY
JAMES J. ARMSTRONG (SEAL)
CLERK OF AS. & SC.


STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas, ... Appellant,

V.

Bolus & Bolus
Attorneys Keith Bolus, Officially
Michael T. Bolus, Officially
and Individually, ... Respondent.

**AFFIDAVIT
OF
CLARK D. THOMAS**

NOW COMES Clark D. Thomas, *pro se*, Appellant in the above-captioned case, and states, under oath, the following pursuant to Rule 240(c)(3), SCACR:

1. To the best of my knowledge and belief, the *Motions*, Orders, and transcript pages herewith are true and correct copies from proceedings before the Honorable Henry T. Woods dated September 11, 2012, and the Honorable Lisa A. Kinon dated September 20, 2012.

Further affiants sayeth not.

SUBSCRIBED AND SWORN TO before me
This 31st day of January, 2013

Satika Foster (L.S.)
Notary Public for South Carolina
My Commission Expires: August 9, 2021.

Clark D. Thomas
Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29169

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge
Trial Court Case No.: 2010-CP-10-04820

Clark D. Thomas, ... Appellant,

V.

Bolus & Bolus
Attorneys Keith Bolus, Officially
Michael T. Bolus, Officially
and Individually, ... Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the document listed below have been sent
by U.S. Mail:

Carlock, Copeland & Stair, LLP
40 Calhoun St., Ste. 400
Charleston, SC 29401; and,

Michael T. Bolus, Esquire
2127 Dorchester Rd.
N. Charleston, SC 29405.

1. *Petition for Rehearing En Banc.*

January 31, 2013
Columbia, SC

Clark D. Thomas
Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

The South Carolina Court of Appeals

Clark D. Thomas, Appellant,

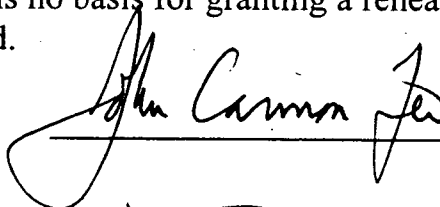
v.

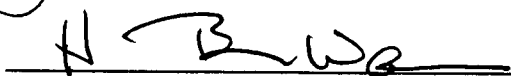
Bolus & Bolus, Attorneys Keith Bolus, Officially,
Michael T. Bolus, Officially and Individually,
Respondents.

Appellate Case No. 2011-194846

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.

 _____ C.J.

 _____ J.

 _____ J.

Columbia, South Carolina

cc: Clark David Thomas
Michael T. Bolus
Michael Baxter McCall
David W. Overstreet

FILED

12 Mar 2013