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**SC Court of Appeals**

**Form 13**

**BREIF OF APPELLANT**

THE STATE OF SOUTH CAROLIN

In the Court of Appeals

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APPEAL FROM HORRY COUNTY

Culbertson, Circuit Court Judge

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Case No. 2023-CP-000703

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The State of South Carolina

Respondent

v.

Katrina Morrison

Appellant

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**BRIEF OF APPELLANT**

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**Katrina Morrison**

**4530 Lighthouse Dr 31E**

**Little River SC 29566**

**843-593-7240**

**Appellant Pro Se**

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## Table of Authorities

1. The United States Constitution
2. The State of South Carolina Constitution
3. Cases;

*Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394

*Strickland v. Washington*, 466 U.S. 668 (1984)

### Other Authorities

[https://www.ncsc.org/ data/assets/pdf file/0018/40365/RRT-](https://www.ncsc.org/data/assets/pdf_file/0018/40365/RRT-)

**Technology-ATJ-Remote-Hearings-Guide.pdf**

## Statement of Issues on Appeal

1. HAS FAIR PROCEDURE BEEN MET WHERE AN APPEAL HEARING IS HELD VIA WEB-X AND THE APPELLANT HAS NOT BEEN GIVEN A LINK OR ACCESS TO THE HEARING?
2. WAS THE APPELLANT ADEQUATLY REPRESENTED AT THE HEARING?
3. DID THE TRIAL COURT ERR IN DISMISSING THE CASE?

## STATEMENT OF THE CASE

On April 23<sup>th</sup> 2023 Appellant, Katrina Morrison brought this action alleging among other things that she was denied due process and there are issues of fair procedure as her attorney failed to appear at the scheduled hearing April 12<sup>th</sup> 2023. The Appeal before Judge Culbertson in the Fifteenth Judicial District of South Carolina- this hearing scheduled thru Web-X.

Appellant was represented, however, never notified of the hearing nor given a link to attend. Appellant on numerous occasions contacted her attorney's office from January when the original case was tried thru April Appellant learned of the upcoming hearing having looked at the courts website on the 7<sup>th</sup> of April and immediately contacted Attorney Kirk Truslow<sup>1</sup>. Attorney Truslow directed the Appellant to attend his office at 1:00 pm on the following day April 12<sup>th</sup> 2023 for the hearing.

Appellant attended the office of Attorney Truslow accompanied by Ms. Susan Flynn<sup>2</sup> and was provided access to the Web-X thru an office computer. Attorney Truslow never attended his office while appellant had been there over two hours and signed on to the proceeding via computer. The

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<sup>1</sup> E-mail chain of correspondence between Appellant and attorney Kirk Truslow.

<sup>2</sup> Affidavit of Ms. Flynn.

Web-X was disconnected by Attorney Truslow staff prior to the case being called and assured Appellant that "Kirk has handled it".

## STANDARD OF REVIEW

### Due Process and Fair Procedure

As defined in *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394

The Court has determined that due process requires, at a minimum:

(1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal.

This is defined by our holding that "[t]he fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

In matters of hearings being held via internet the document being used as the guide in such times would be "Remote Hearings and Access to Justice"<sup>3</sup>

### III. ADOPTING GENERAL PROCEDURES AND PRACTICES CONSISTENT WITH OPEN AND EQUAL ACCESS

7. Practice reluctance to punish parties for non-appearance. This is a challenging time for court users and judicial officers alike. Courts are encouraged to practice leniency, at least initially, when litigants do not show up remotely. Additional effective notice **before** punitive action is taken as a result of non-appearance is highly recommended (e.g., an additional mailed notice of a new hearing date with a description of where to find the information on how to appear remotely for the continued hearing).

### IV. PROVIDING INFORMATION AND TRAINING TO COURT PERSONNEL AND USERS

1. Scheduling and notice of remote proceedings Courts should consider how hearings are scheduled: If a court traditionally docket multiple hearings at the same time, that court might need to switch to individual scheduling with time-

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<sup>3</sup> [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf)

certain proceedings in order to provide more certainty and transparency to litigants.<sup>25</sup> This will provide litigants with other responsibilities during shelter-in-place, such as childcare or healthcare support for parents, to have a discrete time to call-in to participate in their hearing.

## V. GUIDELINES FOR CONDUCTING PROCEEDINGS REMOTELY

If an SRL is significantly disadvantaged by having a remote hearing, the court and advocates can consider whether there should be a continuance in the case.<sup>47</sup> Alternatively, if an SRL's case is continued and he or she is disadvantaged by not having a hearing, consider whether the SRL should be requesting a remote hearing or an in-person hearing under appropriate circumstances.

### **Inadequate Representation**

As defined in *Strickland v. Washington*, 466 U.S. 668 (1984)

*The appropriate standard for ineffective assistance of counsel requires both that the defense attorney was objectively deficient and that there was a reasonable probability that a competent attorney would have led to a different outcome.*

*A number of practical considerations are important for the application of the standards set forth above. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. The principles governing ineffectiveness claims apply in federal collateral proceedings as they do on direct appeal or in motions for a new trial. And in a federal habeas challenge to a state criminal judgment, a state court conclusion that counsel rendered effective assistance is not a finding of fact binding on the federal court to the extent stated by 28 U.S.C. § 2254(d), but is a mixed question of law and fact. Pp. 466 U. S. 696-698.*

## **FACTS**

The original case was a jury trial held before Judge Livingston, in the Magistrates Court, appealed by Timothy Kirk Truslow on behalf of Appellant (Katrina Morrison).

Appellant was never notified by her attorney of this hearing. Appellant contacted her attorney 3 days prior to the hearing when she became aware of the hearing by a computer search. Appellant

clearly asked attorney Truslow if he would prefer to be relived as counsel as he had failed to communicate in any way regarding the case in months and neglected to inform the appellant of the hearing. Appellant suggested she would appear the following day before the judge and seeks the courts mercy for an extension of time. Attorney Truslow clearly directed Appellant to attend the hearing via web-x at his office April 12<sup>th</sup> at 1:00 pm.

Appellant, accompanied by Ms. Susan Flynn,<sup>4</sup> arrived as directed by her attorney and was provided access to the Web-X thru an office computer. Attorney Truslow never attended his office (notified the appellant thru his staff that he had an emergency). Appellant and Ms. Flynn had been there over two hours. Appellant was seated in Timothy Kirk Truslow's office and office staff signed on to the proceeding. Appellant further signed on with her own email address when prompted by the computer. This computer provided by the office. The Web-X was disconnected by Attorney Truslow staff prior to the case being called and assured Appellant that "Kirk has handled it". Although Appellant was extremely upset at the lack of information, she was directed to leave the office and "attorney Truslow would be in touch".

Appellant contacted the court the following day April 13<sup>th</sup> 2023 to inquire as to the new date and was informed by Judge Culbertson's clerk that the case had been dismissed for lack of prosecution.

Appellant filed an appeal and sought dismissal of Attorney Timothy Kirk Truslow. Appellant further filed a complaint against Attorney Timothy Kirk Truslow with the South Carolina Ethics department regarding the issues.

## ARGUMENTS

1. Appellant asserts that if the hearing had been in-person, the Appellant would have never left the court room without being heard. If the Appellant and her attorney were signed on to the Web-X platform yet were not present when Judge Culbertson refreshed his browser as stated in the transcript some action or question would have been appropriate to find out why. Appellant asserts that based on the guidelines set forth for such situations a continuance would have been the appropriate outcome.

The central tenet of due process is that each person who may be deprived of life, liberty, or property by an act of the state has a right to a fair procedure for the consideration of his or her interests prior to any such act. Therefore, due process would require both notice and an opportunity to be heard.

The Court has determined that due process requires, at a minimum:

- (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal.

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<sup>4</sup> Affidavit of Ms. Flynn.

This is defined by our holding that "[t]he fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

Appellant asserts that she was not informed regarding the matter and had no independent access to the proceedings. She did not choose for herself to appear, default, acquiesce nor consent.

2. Attorney Timothy Kirk Truslow failed to appear, notify the court, nor contact the Appellant. The common law doctrine of *Res ipsa loquitur* could not be more appropriate to this issue.

Appellant argues that based on the outrageous behavior of Attorney Timothy Kirk Truslow Appellant was left unrepresented. The issue of inadequate representation in fact speaks for itself, he did not appear.

3. It is argued that the Honorable Judge Culbertson states in the transcript<sup>5</sup> that he had been contact the day prior to the hearing by Attorney Truslow indicating, he- Attorney Truslow had filed a motion to be relieved as counsel.

Appellant argues that Judge Culbertson having looked into the matter himself found no evidence of any such filing. If the statement –“I have filed to be relieved as counsel” had been true, a continuance would have been needed to address such a motion. Appellant would argue true or not, Appellant was left without representation and given no opportunity to be herd. These facts would have warranted a continuance.

## Conclusion

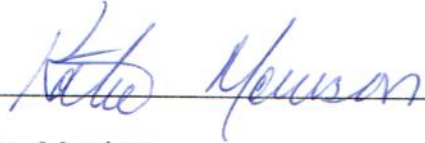
Appellant seeks this appeal be overturned based on the totality of circumstances and relevant case law. Appellants right to be herd denied, Appellant suffered inadequate representation and Appellant believes the court erred in dismissing the case.

In the interest of Justice, Due Process and Fair Procedure Appellant respectfully asserts that this dismissal should be overturned and the appeal allowed.

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<sup>5</sup> Page 4 line 15 of the transcript

Respectfully submitted,

/s/ 

Katrina Morrison

December 28, 2023

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