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In the Supreme Court  
of South Carolina

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S.C. SUPREME COURT

PETITION FOR INJUNCTIVE RELIEF  
AND TEMPORARY RESTRAINING ORDER  
In the Original Jurisdiction of the State

Appellate Case No 2023-001478

Ben Robert Stewart, 223006  
Petitioner,

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v.

Ola A. Johnson, Attorney  
Sarah E. Shipe, Attorney  
Angie Bryant, York County Clerk,  
Respondents,

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Ben Robert Stewart 223006  
990 Wisacky Highway  
Bishopville S.C 29010

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PETITION FOR INJUNCTIVE RELIEF; AND TEMPORARY  
RESTRAINING ORDER; AND AFFIDAVIT OF FACTS;

I, Ben Robert Stewart, 223006, hereby certify that the foregoing is true upon belief and knowledge and swear to penalty for perjury and says:

Pursuant to SCACR Rule 243 this Court has Jurisdiction; and notice was indeed brought to Defendants Ola A. Johnson and Sarah E. Shipe and Angie Bryant pursuant to Rule 65 SCRPC therefore this request for injunctive relief and temporary restraining order is advanced; see S.C. Const Art V § 4, 5.

FACTS OF MATTER

1. I was represented by Ola A. Johnson, and Sarah E. Shipe, Attorneys, regarding this instant PCR matter before this Honorable Court from a sham legal process from York County South Carolina at April 17, 2023 Post Conviction Relief hearing before the Honorable Eugene C. Griffith, Jr Circuit Court Judge.
2. Ola A. Johnson was PCR attorney, and Sarah E. Shipe is Appellate PCR attorney, Angie Bryant is Clerk of York County.

3. The Attorneys conspired and engaged and knowingly assisted one another in depriving (Petitioner) me of State and Federal laws and Constitutions and the Bill of Rights by violating the Rules of Professional Conduct and committing misconduct against me.

4. I submitted several petitions such as Exh #25 Affidavit Motion To Relieve Counsel And Vacate or Remand For Default; Petition For leave To Make And File A Motion 60 (b); Subpoena Duces Tecum; Affidavit Motion For Substitution of Parties; Amendment to brief only; Motion For appointment of counsel (Conflict of Interest) Exh #26 Court of Administration; Complaint Request to Correct Court filing pursuant to Clerk Duty July 25, 2024; Affidavit Motion to Relieve Counsel Pursuant to Faretta v. California; and Affidavit Notice of Cause for Conflict of Interest; Request for Return; Vacate or Remand Sep 28, 2024,

5. Included in these documents presented to this Court, I clearly proved that I raised ineffective assistance against Attorney Shiipe coworker that failed to appear at the PCR hearing thereby making that form of confirming or admitting to actual ineffectiveness a ground for appealing to the Supreme Court for review, however, such conflict that was noted and presented to the Court was ignored and therefore prevailed.

6. I raised all my PCR claims under the rubric of Nance v. Ozmitt holding and circumstances where appointed counsel failed to provide an adversarial challenge to the state and thus prejudice from deficient performance was presumed, *Id.* 367 S.C. 547, 626 S.E.2d 878 (2006)

7. When these claims contained in this instant PCR are ignored not just by the state, using improper methods calculated to produce a wrongful conviction see *Berger v. U.S.* (1935), but defense attorneys see *Tower v. Oliver*, (1984) it denies fundamental fairness.

8. Misconduct is clear, when habitual negligence, corruption,

fraud or oppression is found see; 8-1-80 s.c. code ann,  
see also, State v. Lewis 434 S.C. 158, 863, S.E. 2d 1 (2021)

9. INJUNCTIVE RELIEF AND TEMPORARY  
RESTRAINING ORDER

In Order for a preliminary injunction to be granted, the Petitioner must establish that (1) he would suffer irreparable harm if the injunctive is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law; see ATG Holdings, LLC v. Dunn, 382 S.C. 43, 674, S.E.2d 505 (2009) held property owners were required to post bond; property owners established irreparable harm, property owners established a likelihood of success on the merits and property owners established a lack of other adequate remedies at law.

A. suffer irreparable harm if injunctive is not granted.

Petitioner has demonstrated that he is in need of an

injunction against Attorney Ola A. Johnson, Attorney Sarah E. Shipe and York County Clerk, Angie Bryant, because he is being denied access to the court; hindered, and intentionally blocked or otherwise obstructed in the same form, regardless to the facts of any reasonings because:

- ① PCR claims are suppose to be appealed by attorney Ola A. Johnson to the Supreme Court not an attorney from the Indigent defense where Petitioner raised ineffective assistance of counsel against and there was not valid court order for Attng Johnson to be relieved according to PCR Rules 71.1 (g), nor was a 59 (e) or (a) Motion filed.
- ② Appellate PCR Counsel intentionally created an conflict of interest when Attorney Sarah E. Shipe realized that ineffectiveness claims were filed against her office, furthermore (her) inability to properly raise and argue the listed claims in the original PCR Application; Memo of Law and two Amendments because none of these documents nor the trial transcript or Pre-trial transcripts; exhibits etc. were

submitted into evidence, moreover the Order of dismissal ~~was~~ erroneous finding of fact and conclusion of law pursuant to 17-27-80 - 17-27-90 S.C. code ann, where the States order-proposed; was signed contrary to the availability of the actual record, however, attorney Shipe indeed presented all of these documents to the Supreme Court of South Carolina in the form of an Appendix on June 3, 2024 in violation of Rules of Professional Conduct Rule 3.3, SEACR Rule 407; respectively.

③ Appellate PCR Attorney, Sarah E. Shipe disregarded all professional Conduct Rules; the Rules of Court; and dismantled Petitioner's Mandated Post Conviction Relief claims provided under 17-27-20 S.C. code ann, and Petitioner's S.C. Constitution Article 1 section 3; United States Constitution 14<sup>th</sup> Amendment and Federal Habeas Review see 28 USC A, 2254, et seq. by not requesting that this case be remanded but instead filed ~~and~~ one argument out of thirty five, allowing a classic case as *Shinn v. Ramirez*,

But more importantly presenting evidence to the Supreme Court of South Carolina that was not introduced into evidence.

④ York County Clerk, Angie Bryant, purposely, intentionally and oppressively denied Petitioner access to the Court by falsely claiming in several returns of Petitioner's 59(e) motion; Petitioner's 55(a), (e) motion and including a motion to Relieve Counsel; that "Mr. Stewart, your documents are being returned to you, as your case is under appeal. We must await the ruling of the Appellate Court. Also, you are actively represented by attorney Ola Johnson"

When in fact Mr. Johnson personally wrote the Clerk and explained "this appeal will be handled by the office of Appellate Defense, dated Sep. 18, 2023,

⑤ Clerk Angie Bryant clearly violated/violating established statutory or constitutional rights which a reasonable person would have known, see, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)

⑥ Petitioner's attempt to file a Rule 55 (a) (e) because of the outlined facts of Attorney Johnson and Shipe intentional misconduct engaged with State officials efforts to deprive Petitioner of Federal Habeas relief see; 28 USC 2254 (e) (2) along with conceding or otherwise allowing the order of Dismissal to blatantly falsely state events that aren't true before the Court and to make the State responsible for the injury and loss of Val Hudson, when caveat-warnings was filed in the initial PCR filing; responses and Affidavit Request for PCR, even in Writ of Prohibition before this Court (Supreme Court of South Carolina) which is intentional when the State knew the witness was sick, and also intentional when the defense attorney did not raise Petitioner's Barker v. Wingo, standing

⑦ Petitioner access to the courts are being denied; and deprived and hindered by State officials, and defense attorneys, however only holding the named respondents' ~~account~~ accountable

see; Lewis v. Casey 518 U.S. 343 (1996) denial of access to the courts, and the demonstration of actual injury from officials conduct is plain to see with Petitioner's 2013 filed PCR Application; Memo of law in Support; Exh A-1-A2-A3 A4, A5 A6 (A2 Exh Lauanda Val Hudson Affidavit dated filed Dec. 9, 2013

Note: Val Hudson is ailing and nearly incapacitated and could very well succumb to her ailments in the very near future... Her word in ~~the~~ of defense counsel, Mr. Snow "Val certainly could have possibly cleared this whole thing up..."

Record on Appeal 1096 Exh A-2,

See Memorandum of Law in Support of Post Conviction Relief at 33. In 2019 Val Hudson indeed succumbed to her ailments. see; B12 Obituary of Val Hudson) furthermore, this along with additional false assertion from the States order of Dismissal at pg (7) footnote, "Applicant did not produce her testimony at the evidentiary hearing"

when in fact Ola A. Johnson read the late Val Hudson  
Exh A-2 Affidavit on the record see PCR transcript, at (20)

Therefore the Attorneys that's representing falsity as facts  
only condones it, where Attorney Johnson should have filed  
a Rule 59(e), or Attorney Shipe should have request a  
Remand according to law and statutory provisions.

⑧ Attorneys Ola A Johnson & Sarah E. Shipe and Clerk,  
Angie Bryant denied Petitioner access to the Court and  
such hindering is intentional and injury is clear; irreparable  
harm exist with the lost of vital witness and Petitioner's  
statutory rights pursuant to 17-27-10 et seq and 28 USC  
2254, et seq and Constitutional rights under the First,  
and Fourteenth Amendment are in danger if not ~~is~~  
properly adjudicated and applied because the Sixth  
Amendment right to a speedy trial is denied under  
S.C. Const, Article 1 § 9 and U.S. Const 6, th Amendment.

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⑨ also the State forfeited its Appellate argument; and or default proceedings in Post Conviction Relief pursuant to 17-27-70 S.C. Code Ann. See Stokes v. Stirling 64 F.4th 131 (4th Cir 2023) and Kneece v. State, 269 S.C. 177, 236 S.E.2d 746 (1977) because Petitioner will prohibit the State ~~from~~ from introducing any evidence from the lower Court in any Court; and such default prejudiced Petitioner because the State intentionally did not ~~answer~~ answer PCR Claims and indeed violated 17-27-80 according to the law and facts of the case, therefore Petitioner will suffer irreparable harm if injunction is not granted in this litigation,

B. will likely succeed on the merits of the litigation

10. In totality Petitioner's PCR is under the Rubric of Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006)

where appointed counsel failed to provide an adversary challenge to the State and thus, prejudice from deficient performance was presumed, according to statute 17-27-80 South Carolina Code, the conclusion of law and finding of fact are supposed to be according to each claim, however, in the Order of dismissal the Claims were adjudicated in summary which violated statute, and the applicable law was not cited thereof, moreover as mentioned, the Order of dismissal contained several instances of falsity see; U.S. v. Berger 295 U.S. 78 (1935) and the transcript of the evidence expanding on the conclusion of facts was not submitted into evidence at the PCR hearing; see, South Carolina State Highway Dept v. Meredith, 241 S.C. 306, 128 S.E. 2d 179 (1962) held that where trial judge found that transcript of argument made by counsel for respondent, to which exception was taken was so incomplete as to be very prejudicial to appellant; also Austin v. Taylor, 284 S.C. 414, 326 S.E. 2d 656 (1985) held that transcript of record was patently insufficient to warrant a review by the

court citing, Meredith, supra, also, see Stokes v. Stirling, 64 F4th 131 (4th Cir 2023) where state forfeited appellate argument quoting, Shinn v. Ramirez, 596 U.S. 366 (2022) where prohibition from considering evidence from PCR Court in violation of 28 USC A 2254 (e) (2), and the State's Order of dismissal was in violation of Kemp v. United States 596 U.S. 528 (2022) because of the misapplied controlling law, using Strickland v. Washington, (1989) standard and a In Re Winship standard (1970), when the applicable law and standard of Review was pursuant to Nance v. Ozmint, supra quoting United States v. Cronin, (1984) and Jackson v. Virginia (1979), thus, violating, Post Conviction Relief Rule 71.1(e) before the Court, and S.C. Const. Art. 1 Section 3, and the First amend Petition Clause and the Fourteenth Amend procedural, and substantive due process and equal protection of the laws; moreover, Petitioners right to Certiorari pursuant SCACR Rule 243,

① Also raised under the Nance v. Ozmint standard included in this

instant PCR action is a violation of an Act of Congress; pursuant to the Interstate Agreement on Detainers Act, 18 USCA App 2:2; also S.C. code 17-11-10, et seq regarding Article VI(b) provision which states: "No provision of this agreement shall apply to any person who is adjudged to be mentally ill" see; Article VI (b)

Q Petitioner was transported two different occasions on April 2008 and November 2015, from Pennsylvania and Petitioner sought remedy for the violation whereas he is a social security dependant and was on Social security for mental disability, however, the State and trial attorney Kenneth D. Snow conspired to defraud the proceeding in Petitioner's pre-trial Emergency Writ of Habeas Corpus filed with the Attorney General Office, (Henry McMaster) the Sixteenth Circuit Solicitors office (Wille Thompson) and the York County Clerk of Court (David Hamilton) certified mail receipt Return, all parties on February 9, 2009, containing the Ex B1 Pennsylvania Bureau of Disability Determination dated ~~January~~ January

20, 2006 (eight pgs). The proceedings for the Habeas Corpus where trial Attorney did not amend and did not raise the Article VI(b) violation is on Record on Appeal at 31-54.

and proof of the failure to amend is Exh Bb receipt of the entire file where no amendment was made.), however Mr. Snow raised an obvious and inept claim that was baseless and concluded already.

③ The Order of dismissal at (19) incorrectly quoted the Article VI(b) provision and altered the meaning stating:

"Applicant contends his removal from Pennsylvania to South Carolina was barred by the Interstate Agreement on Detainers ("IAD"), S.C. Code Ann § 17-11-10 Art VI(b), which prohibits removal of persons adjudged to be mentally insane. Applicant did not provide any evidence supporting his claims to have been adjudged "mentally insane" as that term is defined by the IAD.

(4) The alteration of the IAD is a violation of the Supremacy Clause see; *United States v. Jones*, WL4279963 (Sep 12, 2008) making states unable to alter the IAD under the Supremacy Clause. Petitioner indeeds apply the federal statute as well where the original claim was actually raised see PCR App. at pgs (8) and (10) also Exh B-2 Pretrial Writ of Habeas Corpus.

(5) Petitioner's request for injunctive relief and temporary restraining order against state officials acting in violation of Federal law are premitted pursuant to, *Ex Parte Young*, 209 U.S. 123 (1908) Under this limited exception, a federal court may issue prospective, injunctive relief against a state official to prevent ongoing violations of federal law, such as when the State official officers is enforcing, or threatening to enforce an allegedly unconstitutional state law, the exactly the circumstances in this instances demonstrated here.

(c) The likelihood Petitioner will succeed on the merits on the underlined bungle of errors, deprivations and violations are "very high", whereas professional conduct on both sides are clearly violated; e.g., a violation of a speedy trial right and intentional delay in a ten year Post Conviction Relief Proceeding where the lost of a vital witness Val Hudson, died, when Petitioner warned the State see; *Barker v. Wingo* (1972) and an adjudication on the falsity contained in the Order of dismissal regarding Petitioner waiving claims, and pg (7) footnote falsely stating:

"Applicant did not produce her testimony at the evidentiary hearing, Therefore, he has failed to prove Trial Counsel was ineffective for failing to interview or call her see e.g., *Martin v. State*, 427 S.E. 450, 455, 832 S.E.2d 277, 279-80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing)."

moreover, pg (9.) footnote of the order of dismissal falsity: " From this evidence, it is inferable that Applicant could have been in the car wearing gloves, which would easily explain why his fingerprints and touch DNA were not found inside the car."

(2) Exhibit A-2 Affidavit of Lawanda Valerie Hudson, was read on the record and filed and included as exhibit filed Dec. 9, 2013 in York County Clerks office and on April 17, 2023 PCR Counsel Ola A. Johnson stated: "In making this affidavit I read the testimony -- I read the testimony of Reed Allen, Davonious Mack, and Tell Terrell Addison, My testimony will comment by pages and line. I provide this affidavit to tell the truth of what happened at my friend, Marday Bishop's place on the night in October, 2006, when Reed Allen, who had been partying with us, lied that Marday's brother, Ben Stewart, gave him a gun in a bag to hide for him. I also provide this affidavit to

say that Davorious Mack and Terrell Addison did not  
come to Monday's place that night and are lying when  
saying they was there and Ben gave Reed a gun "  
see; PCR hearing transcript April 17, 2023 also Appendix  
at pg 1420-1421.

therefore, the order of dismissal falsity is not and could not  
have concluded its finding of fact with the evidence, furthermore  
the states unfairly applied method is prejudicial and Petitioner  
will likely succeed on the merits of the litigation.

C. there is an inadequate remedy  
at Law

11. Petitioner has an unfettered right to appeal pursuant to  
Rule 71.1 (g) SCRCP, which is the only opportunity to raise  
ineffective assistance of counsel in PCR proceedings  
and appeal if it is denied in the lower court. see;

Ryan v. Martinez, 132 S.Ct. 1309 (2012) the United States Supreme Court held that states (citing S.C. Rule 71.1 (d)) that preclude the raising of ineffective assistance claims until initial collateral review, here Petitioner's attorneys Ola A. Johnson and Sarah E. Shipe both exceeded Ryan's ineffectiveness under Strickland v. Washington standard by violating professional conduct and committing misconduct against Petitioner and engaging and conspiring in misconduct intentionally see Tuer v. Glover, 467 U.S. 914 (1984) disregarding Rules of the Court and procedural aspects for Candor Toward the Tribunal see; SCACR Rule 407, Rule 3.3. Sections (1) (2) (3) (b) see also 8-1-80 S.C. Code Ann., Rules of Professional Conduct Rule 8.4 (a)(b)(c)(d)(e)(g) It is established that an attorney's errors in a post conviction relief proceeding does not qualify as cause for a default, see; Coleman v. Thompson, 501 U.S. 722, 753-754 (1991)

12. Petitioner filed three documents to the Supreme Court of South Carolina pursuant to S.C. Const Article V, Section 4, 5, regarding an actual conflict of interest however, the Order's failure to acknowledge the ~~and~~ request to review discipline persons admitted such as Attorney Ola A. Johnson and Sarah E. Shipe and Clerk Angie Bryant.

13. The Supreme Court shall have jurisdiction over the admission to practice of law and the discipline of persons admitted see; Kirren v. Secretary of Board of Com'rs on Grievances and Discipline, 271 S.C. 194, 246 S.E.2d 857 (1978) the Supreme Court had exclusive jurisdiction to hear and determine the charges of professional misconduct and the Circuit Court had no jurisdiction to issue its temporary order and rule to show cause. Also see) 40-5-10 (Inherent power of Supreme Court to regulate practice of law; other powers cumulative.

14. In cases such as this, the notion that in our adversarial system of justice, that the adversary holds sway over the opponent's ability to establish its position unlawfully is beyond comprehension and makes it clear that, Due Process and Equal Protection is systematically being denied. Moreover, the respondents including the Attorney General officer Zachary Jones ~~appears to be~~ <sup>are</sup> complicit in denying.

Petitioner's right of Access to the Court, therefore, respondents intentional acts and inactions that denied the Petitioner's Bill of Rights to the U.S. Constitutional Law/ Amendments and South Carolina Constitutional Law/ Amendment Article 1 Section 3 are violated because according to 17-27-10 et seq; and 71.1 SCACP are violated section (e) (g) SCACR 243 (F)(1) is clearly denied.

15. Petitioner's appeal is contaminated whereas the Appendix contain evidence that was not before the lower Court nor admitted to evidence; see 28 USC 2254 (e) (2) and based it Order of dismissal, and appeal on it, however, Petitioner did not, and seeked default, and

forfeiture by the State, and or waiver, because of the undetermined tactics and engaged misconduct, demonstrated herein which included a showing of an Act of Congress has been violated, Constitutional provisions been deprived and a miscarriage of justice has occurred see; Plyer v. Moore, 100 F.3d 365 (4th Cir 1996) held term "Federal right" as used in the statute does not include rights conferred by consent decrees providing relief greater than that required by federal law. In this matter before the Court, the ITAD is violated; Petitioners appeal claims are being blocked and Federal and State Constitution is violated by attorneys and state officials.

16. Petitioner's article IV(b) violation is indeed an fundamental defect and a deprivation of officials who assisted in the asserted damages raise a genuine issue of fact see; Bush v. Muncy, 659 F.2d 402 (4th Cir 1981)

17. The Post Conviction Relief Procedure is govern by South Carolina Civil Rules of Procedures, see 17-27-20 et seq; also 71.1(a) SCRP. and therefore pursuant to Section (e) Burden of Proof where the applicant has the burden of establishing he is entitled to relief and not the attorney, and such errors are not cause see; Coleman v. Thompson, *supra*; also see; 40-5-80 S.C. code ann, which states:

"This chapter may not be construed so as to prevent a citizen from prosecution or defending his own cause if he so desires"

Therefore; the Supreme Court's Order dated Oct, 2023 is inoppisit and it also allaws an attorney to make clearly demonstrated errors, mishaps, violations, deprivations and professional conduct violations and misconduct against Petitioner regardless of the Order. The reality of the situation and circumstances is; I am innocent and I am being denied fairness **IN THE SUPREME COURT**

18. The doctrine of *Ex Parte Young*, may not be used to enforce a Act against a state official. The doctrine allows a suit against a State official to go forward, notwithstanding the Eleventh Amendment's jurisdiction bar, where the ~~suite~~ seeks prospective injunctive relief in order to end a continuing federal-law violation. see; *Ex Parte Young*, *supra*.

19. Petitioner's federal habeas corpus review pursuant to 28 U.S.C.A. 2254 (e) (2) and appellate review pursuant SCACR Rule 243 is being denied because the attorneys Ola A. Johnson and Sarah E. Shipe are violating rules of the Court and laws state and federal against Petitioner, and the Clerk of York County Clerk of Court Angie Bryant continue to falsely imply that Ola A. Johnson is representing Petitioner; using his name to obstruct or otherwise block off hinder filings in that Court and purposely lie when Ola Johnson personally wrote and

explained that he no longer represented Petitioner to Ms. Bryant. These actions denied Petitioner Rule 55(a)(e) against the State when the lost of Val Hudson is injury due to an 10 plus year delay and warned the need of an ~~expedit~~ expedited PCR review in initial filing of PCR Application in 2013 and other filings as well, see; Exh B12 Obituary of Lavanda Val Hudson, (2019). see; Winter v. Natural Resources Defense Council, Inc, 555. U.S. 7, 129 S.Ct. 865 (2008) held Plaintiff seeking preliminary relief are required to demonstrate that irreparable injury is likely in absence of injunction, - Here, the intentional misconduct against Petitioner is being ignored; while Petitioner is clearly making Petitions pursuant to S.C. Const. Art V, Section 4, 5. and the actions and inactions contained in this request for injunctive relief and temporary restraining order.

D.

## Relief

Petitioner Ben Robert Stewart, indeed brought notice to named respondents; Ola A. Johnson; Sarah E. Shipe; and Angie Bryant; and seeks an injunction for relief and a temporary restraining order which consist of the following conditioning:

### 1. INJUNCTIVE RELIEF

- (a) stop and refrain any form of misconduct behavior against petitioner.
- (b) correct any and all procedural violations and substantive violations regarding Petitioner's appeal that violates any rules of professional conduct.
- (c) amend or file a supplemental brief if not relieved as counsel contained only with record that is before the PCR Court.
- (d) file an Writ of Habeas Corpus for extraordinary circumstances regarding Barker v. Wingo violation and Interstate Agreement on Detainers Act article VI (b) violation.

- (e) in the interest of justice, request to be relieved.
- (f) request that Petitioners complaint pursuant to Art. V, §45, reviewed by Supreme Court of South Carolina.

## 2. TEMPORARY RESTRAINING ORDER


- (a) request to be relieved. be granted, per Petitioner.
- (b) Order that both Ola A. Johnson and Sarah E, Shipe stay away order.
- (c) Order that York County Clerk, Angie Bryant refrain from handling Petitioners court filings until further notice, and appoint assistant for such services and stop any form of misconduct behavior against Petitioner.

## 3. INJUNCTIVE OR TEMPORARY RESTRAINING ORDER.

- (a) any relief that is consistent with the requested relief the Court deems appropriate.

On this 15<sup>th</sup> of October 2024,

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Respectfully Submitted  
Ben Robert Stewart 22306  
990 Wisacky Highway  
Bishopville SC 29010