

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Circuit Court Judge of the Ninth Circuit

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SC Court of Appeals

Case No. 2019-CP-10-6590

J. Doe,

Appellant,

v.

James Y. Becker, individually,
M. M. Caskey, individually, and
Haynsworth Sinkler Boyd, P.A.,
Mikell R. Scarborough,
in official capacity and, as
indicated, individually
re unofficial acts, and
Charleston County,

Respondents.

MOTION FOR RECONSIDERATION AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,
RULE 240(j), SCACR, DE NOVO APPEAL OF EX PARTE SUMMARY DISMISSAL WITHOUT
FACTUAL SUPPORT OR RECORD ON APPEAL BY AN INDIVIDUAL, AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,
RULE 221, SCACR, PETITION FOR REHEARING AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

Without being disagreeable, the October 29, 2024, opinion is reversible as a matter of law due in whole or in part to the attached copy of opposing counsel's October 8, 2024, motion. Two days later, on October 10, 2024, the opinion on appeal herein was issued. Without authorization, due process, or notice to the other side, Defendant(s) caused Charleston County to be erased/inactivated as Defendant in this Charleston County Circuit Court case. The appellant is prejudiced thereby and timely appeals. Moreover, the appellant timely amended notice of appeal to include the October 23, 2024, Form 4 and all intermediate orders including but not limited to, denial of disqualification of conflicted Pro Se Advocate Witness Defendant Caskey as attorney for Charleston County. Significantly and materially, the record reflects conflicted Pro Se Advocate Witness Defendant Caskey is not counsel of record for Defendant Charleston County and there is no authorization for conflicted Pro Se Advocate Witness Defendant Caskey to represent Defendant Charleston County: Pursuant to this Honorable Court's order in the *Brooks, infra*, case and the Rules of Professional Conduct including **Rule 3.7 Lawyer As Witness, RPC**, Rule 407, SCACR, as well as generally, denial of plaintiff's motion to disqualify conflicted Pro Se Advocate Witness Defendant Caskey, who is a necessary witness to material facts and perpetrator of bad faith debt collection practices herein, is a denial of State Constitutional substantial rights akin to mode of trial including prejudicial unsworn testimony depriving a party of the State Constitutional right to confront and effectively to cross-examine the necessary witness to material facts herein. Impairing/diminishing the substantial right to confront and effectively cross examine a necessary witness to material facts effectively forecloses the undersigned from a full and fair determination on the merits at trial by jury incapable of vindication on appeal which is immediately appealable.

Specifically, as set forth more fully below, the corporate defendant has put this Honorable Court in an untenable position, not to mention the untenable position in which it has placed the conflicted Pro Se Advocate Witness Defendant Caskey: The attached copy of demand letter dated November 1, 2016,

is signed by conflicted Pro Se Advocate Witness Defendant Caskey on behalf of defendant corporation, it contains false and misleading statements, it is disputed, and it is a violation of law, including but not limited to, the FDCPA, SCCPC, and/or SCUTPA. *See Brooks v. SCCID and OID*, 419 S.C. 319, 797 S.E.2d 402 (S.C. App. 2017). *See, e. g., McRae v. Minor* (S.D. Miss., 2017) [“Specifically, the Court finds that *pro se attorneys* should be disqualified from representing any party other than themselves in this case, including the *defendant corporation*.” (emphasis supplied)]. Conflicted Pro Se Advocate Witness Defendant Caskey is a material witness and bad faith debt collector who is disqualified from representing Defendant Charleston County. Accordingly, the appellant respectfully requests disqualification be granted along with abeyance pending resolution regarding denial of substantial rights akin to mode of trial including prejudicial unsworn testimony and/or hearsay depriving a party of the State Constitutional right to confront and effectively to cross-examine the necessary witness to material facts, conflicted Pro Se Advocate Witness Defendant Caskey herein, incapable of vindication on appeal.

As noted, there is no authorization for conflicted Pro Se Defendant Caskey to represent Defendant Charleston County. In fact, Defendant Charleston County’s authorized counsel made motion for continuance in the attached copy to which Plaintiff consented. But for Defendant(s) impermissibly usurping authority of the South Carolina Judicial Department to erase itself as Defendant in an active case, this matter should have and would have been continued. It raises serious questions as to how that could even happen. Defendant(s) direct or indirect manipulation and/or fabrication of South Carolina Judicial Branch entries on Charleston County’s website and Public Index to induce the Court’s reliance and/or prejudice the case cannot pass constitutional muster, undercuts appearance of a disinterested court, jeopardizes the integrity of the South Carolina Judicial Branch, and is respectfully appealed. The *Brooks* case and the RPC’s prohibition against advocate as witness require disqualification because failure to disqualify impermissibly hamstring the court and denies multiple parties a full and fair determination on the merits. *Brooks v. S.C. Comm’n on Indigent Def.*,

419 S.C. 319, 797 S.E.2d 402 (S.C. App., 2017). For good cause, substantial justice, and/or fundamental fairness, the appellant requests compliance with the prohibition against advocate as witness, with the Rules of Professional Conduct including Rule 3.7, RPC, Lawyer as Witness, Rule 407, SCACR, and with the *Brooks* case which disqualifies the conflicted pro se advocate witness defendant who is a necessary party to material facts from representing any party other than themselves. *Id.* In the alternative, the October 29, 2024, sua sponte ex parte summary dismissal by a single individual herein without factual support or jointly-filed ROA should be vacated and deferred until final briefs and the ROA are filed. Pertinent State Constitutional provisions and statutes are as follows:

Art. 1, § 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. I, § 22. No person “shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ... and he shall have in all such instances *the right to judicial review.*” (Emphasis supplied.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to *petition the government or any department, including the matter herein, for a redress of grievances.* (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens 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. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, *no law impairing the obligation of contracts*, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public *trial by an impartial jury*; to be fully informed of the nature and cause of the accusation; *to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by*

his counsel or by both. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. V, § 8. Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Art. V, § 9. Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions.

The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court *shall bind the Court of Appeals as precedents*. (1985 Act No. 9.) (Emphasis supplied.)

Art. V, § 16. Compensation of Justices and judges; practice of law and dual office holding.

The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court *shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term*. They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) (Emphasis supplied.)

S.C. Code § 14-8-220

Power of Court and judges to administer oaths and writs; **appeal**. The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** (Emphasis supplied).

S.C. Code § 14-8-80

By statute, the Legislative intent, letter, and spirit of the law *require at least three judges* to constitute a quorum of the Court of Appeals for interpretation of the law and *to decide appeals*. The concurrence of a majority of the judges is necessary to decide appeals and there is *no statutory authority* for a single individual's overreaching sua sponte ex parte dismissal. S.C. Code § 14-8-80. (Emphasis supplied.)

DISCUSSION

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. As set forth more fully below and without being disagreeable, objection to the October 29, 2024, sua sponte ex parte summary dismissal by a single individual without factual support or jointly-filed Record on Appeal (ROA) is respectfully submitted. In the alternative, the October 29, 2024, sua sponte ex parte summary dismissal herein without factual support or jointly-filed ROA should be vacated and deferred until final briefs and the ROA are filed. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

I. Threshold matter.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. As a threshold matter, a citizen has the self-evident right to full and fair notice from the clerk of the COA which complies with the South Carolina Rules of Court and the SCACR including Rule 262, SCACR. The clerk's failure to comply with the most basic principle of due process, that is, required notice consistent with the usual and customary notice requirements including Rule 262, SCACR, prejudices the parties and the undersigned is prejudiced thereby. The record reflects there is no counsel of record for the undersigned. The record reflects the appellant is self-represented. Specifically, self-represented parties are not allowed to file electronically. Under Rule 262, SCACR, a self-represented party may ask the clerk to provide notice electronically.

Rule 262, SCACR. The record reflects no such request and if it did, that request is falsified. In fact, no such request has been made. This office has no access to the internet. The record reflects the clerk ignores or rebuffs timely requests for compliance with Rule 262, SCACR. In reliance on the Rules of Court including Rule 262, SCACR, the party's appeal and the party are prejudiced by the clerk's failure to comply with the South Carolina Rules of Court and the SCACR including required notice. The clerk's failure to comply with basic due process, including the usual and customary notice requirements, is a recipe for improper procedural default, unequal treatment, discrimination against a member of a protected class which is against public policy; bad faith dismissals, and/or the ministerial clerk's multiple overreaching attempts to dismiss meritorious appeals. To the extent there is ambiguity, the rule of lenity supports the appellant's position. The clerk's unauthorized notice is ineffective under the Rules of Court and the SCACR. Accordingly, the appellant respectfully requests this Honorable Court issue its order for compliance with SCACR's usual and customary notice requirements and contact information as required by the SCACR, including Rule 262, SCACR. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

II. The orders on appeal are appealable pursuant to S.C. Code § 14-3-330 (2023). T

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Pursuant to S.C. Code § 14-3-330 (2023), the orders on appeal are appealable. Specifically, S.C. Code § 14-3-330(1) authorizes appeal of the orders which “involve the merits” and “necessarily affect the judgment”: Erasing a defendant as defendant in an active case necessarily affects the judgment and involves the merits because it “finally determine(s) the whole ... cause of action” as inactive against Defendant Charleston County. Moreover, conflicted Pro Se Advocate Witness Defendant Caskey is not authorized to represent Defendant Charleston County or any Defendant other than herself. *Brooks v. S.C. Comm'n on Indigent Def.*, 419 S.C. 319, 797 S.E.2d 402 (S.C. App., 2017). Pursuant to FDCPA/SCCPC/SCUTPA (Fair Debt Collection Practices Act/South Carolina Consumer Protection Code/ South Carolina Unfair Trade Practices Act) and other claims herein, denial of disqualification of conflicted pro se advocate witness attorney defendant who is a necessary witness to material facts necessarily affects the judgment and involves the merits where conflicted Pro Se Advocate Witness Defendant Caskey, as employee of defendant corporation, signed the demand letter with false claims of a loan and false inflated interest charges. *Mid-South Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). For the record, conflicted Pro Se Advocate Witness Defendant Caskey admitted in Federal Court, “There is no loan.” See attached copy of cashiers check signed by Bill Boyd. Accordingly, the orders are appealable pursuant to S.C. Code § 14-3-330(1).

Further, the orders are appealable pursuant to Subsection (2) which provides appeal for an order affecting a substantial right. S.C. Code § 14-3-330(2) (2023). Under the facts, denial of disqualification denies the substantial State and Federal constitutional right, akin to mode of trial, to confront and effectively cross examine a necessary witness to material facts thereby necessarily involving the merits and affecting the judgment incapable of vindication on appeal.

In addition, Subsections (1) and (2) may overlap and appealability of an order may fall under both as in this case involving the merits of the claims including bad faith debt collection practices perpetrated by conflicted Pro Se Advocate Witness Defendant Caskey, as employee of defendant corporation. *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C.1, 393 S.E.2d 176 (1990); *Toal et al., Appellate Practice in South Carolina*, 3rd Ed. (2016), p. 142-145. Accordingly, the orders on appeal are appealable pursuant to S.C. Code § 14-3-330 (2023).

III. The conflicted pro se advocate witness defendant attorney has disqualified herself.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Importantly, the prohibition against advocate as witness safeguards a full and fair hearing on the merits and safeguards the courts which cannot be corrected on appeal. Rule 3.7, RPC, Rule 407, SCACR. On or about May 9, 2019, and before, the conflicted Pro Se Advocate Witness Defendant Caskey disqualified herself and unprofessionally engaged in wrongdoing, including but not limited to, publishing plaintiff's confidential, privileged information over the internet in violation of express directives by multiple courts and in violation of governing law. With willful neglect and/or gross negligence, the conflicted Pro Se Advocate Witness Defendant Caskey wrongfully published confidential privileged information with the knowledge it was subject to pending motion to seal. The record reflects the advocate witness admits the wrongdoing in the Federal Court. Conflicted pro se advocate witness Defendant Caskey is a necessary witness to material facts and therefore, is disqualified as advocate for anyone other than herself including the corporate Defendant. *Brooks v. S.C. Comm'n on Indigent Def.*, 419 S.C. 319, 797 S.E.2d 402 (S.C. App., 2017).

The attached copy of correspondence dated 11.1.16 from conflicted Pro Se Advocate Witness Defendant Caskey on behalf of the corporation establishes a prima facie case of violation of FDCPA/SCCPC/SCUTPA demanding and falsely claiming a loan with unlawful interest. For the record, defendants' answer to the legal malpractice suit did not claim any monies due and owing

because there is no loan nor any monies due and owing. See copy of cashier's check cashed by Bill Boyd. Even if there were a loan or any monies due and owing, failure to raise it in the answer to the legal malpractice suit operates as a waiver. Moreover, conflicted Pro Se Advocate Witness Defendant Caskey has admitted on the record, "There is no loan." Defendants have breached fiduciary duty to a former client including claiming increased interest and monies defendants have not earned as well as breach of confidentiality to a former client by impermissibly publishing and disseminating plaintiff's confidential, privileged information over the internet. Conflicted Pro Se Advocate Witness Defendant Caskey has failed to comply with timely request to produce the referenced loan documents regarding disputed claims of entitlement to charges thereon; she is a necessary witness to material facts.

Moreover, the record reflects material omissions, misstatements, and frank falsehoods by conflicted Pro Se Advocate Witness Defendant Caskey, including but not limited to, fraud upon the state circuit court and appellate courts. See attached state court motion entered 9.29.17 wherein Defendant Caskey admits the individual defendants have no ownership interest and therefore, no standing. Her 11.1.16 letter, copy attached, states it is sent on behalf of "our firm, Haynsworth Sinkler Boyd, P.A." That letter conflicts with fraudulent misrepresentations made by Pro Se Advocate Witness Defendant Caskey in her unverified petition in the South Carolina Circuit Court falsely claiming monies owed to individual defendants who she now admits have no ownership interest. Defendant Caskey's unverified petition is fatally defective. See *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). The attached copy of the state court motion entered 9.29.17 conflicts with the attached copy of the 11.1.16 letter and establishes Pro Se Advocate Witness Defendant Caskey materially omitted and/or misrepresented the fact there was no ownership interest, therefore, no standing for the individual defendants. The attached copy of South Carolina Court of Appeals (SC COA) correspondence dated 2.24.17 also memorializes and establishes the conflicted Pro Se Advocate Witness Defendant Caskey materially omitted and/or misrepresented the fact there was no ownership interest in the individual defendants, therefore, no standing. See attached copy of SC COA public information docket regarding

individual defendants who now admit no standing. Under these circumstances, conflicted Pro Se Advocate Witness Defendant Caskey prejudices a full and fair determination on the merits, lacks candor with the courts, and/or prejudices multiple parties.

Moreover, appearance of impropriety/impropriety in fact by co-defendants and breach of fiduciary duty to a former client by untrustworthy officers of the court deserve consideration regarding disqualification. "In addition, fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended. See, e.g., *Burnett v. Sharp*, 328 S.W.3d 594 (Tex.App.2010) (holding the plaintiff's claim against a former attorney for breach of fiduciary duty for failure to return the unearned portion of a retainer fee constituted a viable claim even though the attorney's representation had ended)." *Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (SC 2011). Conflicted Pro Se Advocate Witness Defendant Caskey's failure to verify her petition is a fatal defect precisely because the proceeding is summary. See *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). There is no common law litigation immunity for attorneys covered by the FDCPA(SCCP/SCUTPA). *Sayed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007)(emphasis supplied). "The purpose of this immunity is to preserve the integrity of our judicial system, **not to assist a self-interested party who allegedly lies....**" *Todd v. Weltman, Weinberg & Reis Co.*, 434 F.3d 432 (6th Cir. 2006) (emphasis supplied). Accordingly, conflicted Pro Se Advocate Witness Defendant Caskey is a necessary witness to material facts and the Rules of Professional Conduct prohibit Pro Se Advocate Witness Defendant Caskey from representing anyone other than herself. *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477.

IV. Prohibition against advocate witness is a substantial right.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. The attached November 1, 2016, letter is signed by the conflicted pro se advocate witness Defendant Caskey as employee of the corporation. Conflicted Pro

Se Advocate Witness Defendant Caskey and the corporation advertise for and regularly engage in collection of debt owed to others. The conflicted Pro Se Advocate Witness Defendant Caskey in her 11.1.16 letter falsely claims a loan, falsely claims unlawful interest, fails to provide itemization, and falsely claims entitlement to false charges thereon. Despite request, she has failed to provide copies of the loan documents she cites. The conflicted Pro Se Advocate Witness Defendant Caskey is a necessary witness to material facts, including but not limited to, the purported loan documents she herself references and the disputed claims of entitlement to charges thereon. Conflicted Pro Se Advocate Witness Defendant Caskey, as employee of the corporation, engaged in wrongdoing claiming false and/or deceptive charges under color of state law, thereby placing “the proverbial butcher’s thumb” on the scales of justice. See *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972). Consistent with the South Carolina Rule 3.7, RPC, Rule 407, SCACR, the New York Rule 3.7 provides that “‘a lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact.’... New York courts have interpreted Rule 3.7 to require the disqualification of counsel upon the movant's showing that the attorney's testimony is necessary and that there is a substantial likelihood of prejudice if the attorney continues to act as an advocate. See *Capponi v. Murphy*, 772 F.Supp.2d 457, 471–72 (S.D.N.Y.2009).” *In re Liotti*, 667 F.3d 419 (4th Cir., 2011). In the instant case, the conflicted Pro Se Advocate Witness Defendant Caskey is a necessary witness to, including but not limited to, material misrepresentations contained in the 11.1.16 letter, copy attached. See, e. g., *McRae v. Minor* (S.D. Miss., 2017) [“Specifically, the Court finds that pro se attorneys should be disqualified from representing any party other than themselves in this case, including the corporate defendant.” (Emphasis supplied.)] “As the ethical consideration suggests, even in the ‘usual’ case the advocate as witness poses myriad threats to the integrity and reliability of the judicial process. Those difficulties multiply when the lawyer testifies to his own impropriety. The importance of the lawyer's credibility as a witness, and the necessity of an opportunity effectively to cross-examine him, increase when the lawyer testifies.... Furthermore, there may arise in such an instance issues not only

of credibility and effective advocacy, but of *potentially differing interests of the lawyer and his client.*”
Dasher v. Stripling, 685 F.2d 385 (11th Cir., 1982) (emphasis supplied).

Potential harm to the profession, the courts, the public interest, and/or a full and fair determination on the merits support disqualification and include, but are not limited to, the following: the appearance of impropriety/impropriety in fact of wrongdoing by Defendant(s) herein misusing and abusing their positions as officers of the court to, including but not limited to, impermissibly usurp authority of the South Carolina Judicial Department to erase Charleston County as Defendant in an active case with direct or indirect manipulation and fabrication of South Carolina Judicial Branch entries on Charleston County’s website and Public Index to induce the Court’s reliance and/or prejudice the case; to place “the proverbial butcher’s thumb” on the scales of justice; to materially omit/misrepresent the unpublished status of an unrelated order; to make false/deceptive claims regarding loan/loan documents purportedly based on prior representation by legal malpractice co-defendants; to deprive a former client/litigant of individual, property, and constitutional rights including, but not limited to, the right to defend, to represent oneself, and to file; to materially misrepresent and cause confiscation of the plaintiff’s unearned filing fees when wrongfully “unfiled”; to “unfile” pending motions and future motions in perpetuity including, but not limited to, the pending Rule 60, SCRCF, motion as well as the motion to dismiss conflicted Pro Se Advocate Witness Defendant Caskey’s unverified petition; to cause denial of substantial rights including meaningful opportunity to be heard, due process, and adequate record for meaningful judicial review and appeal; and to fail to comply with and pay the same mandatory court and filing fees that any other lawyer or party would be required to pay. Defendant(s) conduct including lack of candor with the Court cannot pass constitutional muster, undercuts appearance of a disinterested court, jeopardizes the integrity of the South Carolina Judicial Branch, and is respectfully appealed.

The Defendant(s) failed to pay the required filing fees in the underlying matter which are jurisdictional, as in the case of *Merriam v. Davidson*, 184 So.3d 411 (Ala. Civ. App., 2015): “The

financial-history portion of the trial court's case-action-summary sheet reveals that the co-defendants failed to pay a filing fee.... Because the payment of a filing fee is jurisdictional and the co-defendants failed to pay a filing fee, ... we conclude that the trial court lacked subject-matter jurisdiction to rule on the petition. See *Hicks v. Hicks*, 130 So.3d 184, 189 (Ala.Civ.App.2012). Because the trial court lacked subject-matter jurisdiction, its September 2, 2014, order is **void** and will not support an appeal. *Id.* We therefore dismiss ... with instructions to the trial court to vacate all orders stemming from the co-defendants' petition to show cause. *Id.*" *Merriam*, supra (emphasis supplied). Because the payment of a filing fee is jurisdictional and the Defendant(s) in the underlying case herein failed to pay required filing fees, the trial court lacked subject-matter jurisdiction to rule on the underlying petition and all orders therein are void/voidable. Accordingly, conflicted Pro Se Advocate Witness Defendant Caskey is a necessary witness to material facts and has disqualified herself from representing any other Defendant including Charleston County.

The record reflects a substantial likelihood of prejudice if the conflicted Pro Se Advocate Witness Defendant Caskey continues to violate the ethical considerations and/or prohibition against advocate witness. The record reflects the advocate witness herein has introduced unsworn testimony, and the plaintiff is prejudiced thereby, including but not limited to, the right to effectively cross examine conflicted Pro Se Advocate Witness Defendant Caskey's pattern and practice of material omissions, misrepresentations, frank falsehoods, and/or breach of confidentiality to a former client. Moreover, the prohibition against advocate as witness is closely related to the right to a particular mode of trial, a well-established substantial right, including but not limited to, the necessity of an opportunity effectively to cross-examine including unsworn testimony herein. See, e.g., *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Accordingly, conflicted Pro Se Advocate Witness Defendant Caskey is a necessary witness to material facts, has disqualified herself including alleged breach of fiduciary duty to a former client, and is prohibited by the Rules of Professional Conduct including Rule 3.7, RPC, Rule 407, SCACR, from representing anyone other than herself including the corporation.

Brooks v. SCCID and OID, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477.

V. Unpublished orders have no precedential value. Rule 268(d)(2), SCACR.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Challenge to the constitutionality of the revised S.C. Code § 15-36-10 (SCFPA) on its face and as applied is raised. The plaintiff challenges conflicted Pro Se Advocate Witness Defendant Caskey's impermissible direct or indirect ex parte communication of an unspecified, unnamed, unpublished December 3, 2009, order without case number, without caption, and without citation purportedly based on the revised SCFPA which is not applicable to the underlying 2002 legal malpractice suit. There was no notice and no opportunity to be heard. The conflicted Pro Se Advocate Witness Defendant Caskey engaged in impermissible direct or indirect ex parte communication with the court regarding an unpublished, unspecified, unnamed, December 3, 2009, order without case number, without caption, and without citation materially omitting it was unpublished. In fact, the advance sheets confirm there is no such published or unpublished December 3, 2009, order for which the only apparent source is the conflicted Pro Se Advocate Witness Defendant Caskey as no such order is found on the South Carolina Judicial Branch's website. Defendant(s) materially misrepresented that the inapplicable revised SCFPA applied. That unpublished, unspecified, unrelated order is untrustworthy hearsay, inadmissible, and not to be cited in any other case. Rule 268, SCACR. In *Mizell v. Glover*, *infra*, the South Carolina Supreme Court stated: "We find persuasive the jurisprudence developed by the Fourth Circuit and other federal courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v.*

Philip Morris, Inc., 141 F.Supp.2d 320 (E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. Id. (Citing 5 John H. Wigmore, Wigmore on Evidence § 1671a (James H. Chadbourn rev.1974) (citations omitted)).” *Mizell v. Glover*, 351 S.C. 392, 57 S.E.2d 176 (S.C. 2002). “The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Tieco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility determinations).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002). The consideration of hearsay in the form of a court order from an unpublished, unspecified, unnamed, unrelated December 3, 2009, order without case number, without caption, and without citation is contrary to state and Federal constitutional due process safeguards: The conflicted Pro Se Advocate Witness Defendant Caskey materially omitted it was unpublished and under color of state law impermissibly denied a former client's substantial rights including the right to file and to defend. Unpublished orders are not binding precedent, have no precedential value, and should not be cited except in proceedings in which they are directly involved. Rule 268(d)(2), SCACR. Accordingly, conflicted Pro Se Advocate Witness Defendant Caskey lacks candor with the Court and has disqualified herself which is hereby requested.

VI. But for the unconstitutional retroactive application of the revised SCFPA, we would not be here.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. That unpublished, unrelated order is purportedly based on the revised SCFPA, S.C. Code Section 15-36-10. That unpublished, unrelated, December 3, 2009, order cannot be located in published or unpublished orders on the South Carolina Judicial Department's public website or in the Advance Sheets at that time. The only apparent source is the conflicted Pro Se Advocate Witness Defendant Caskey. To the extent Defendant(s) herein are able to fabricate inactive status for Defendant(s) on the Charleston County Circuit Court Public Index and South Carolina Judicial Branch Public Website, Defendant(s) herein have similarly fabricated/misrepresented a December 3, 2009, order. Plaintiff respectfully objects. Haynsworth unilaterally drafted its own legal malpractice order which does not reflect the proceedings or the facts. Transcript available on request. See attached excerpts of the corporation's legal malpractice expert under oath, Professor John Freeman: "Let me be real clear on this (*threatening to and/or prejudicing the case in order to extract fees*). I – I consider that would be unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that. And I – I – That's my answer." Emphasis supplied. But for the unconstitutional retroactive application of the revised SCFPA, there would be no report to ODC pending the appeal with reversal of application of the revised SCFPA in the case of *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011) (the revised SCFPA is effective in 2005 and inapplicable to this 2002 case). The Haynsworth malpractice suit was filed in 2002 with Case No. 2002-CP-10-1448. Thereafter, the case number changed when Judge Michelle Childs returned venue from Columbia to Charleston. Accordingly, the revised SCFPA is unconstitutional on its face and/or as applied because, including but not limited to, it thwarts/prevents meaningful, objective judicial review. See *Cooter & Gell v.*

Hartmarx Corp., 496 U.S. 384, 402, 110 S.Ct. 2447, 110 L.Ed.2d 359, 58 USLW 4763 (1990)(the lack of any legal requirement other than the talismanic recitation of “‘frivolous’ will foreclose meaningful review.” (emphasis supplied)).

VII. Conflicted Pro Se Defendant Caskey acted under color of state law to benefit private parties.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Conflicted Pro Se Advocate Witness Defendant Caskey acted under color of state law by materially omitting and failing to disclose that December 3, 2009, order was unpublished and not binding thereby depriving the plaintiff of individual, property, and constitutional rights including, but not limited to, meaningful opportunity to be heard, to even file or defend, and to make adequate record for meaningful review on appeal. In violation of *Brooks, supra*, plaintiff was denied substantial rights. The plaintiff timely appeared for the hearing, offered the requested information, and requested to be heard but was denied. See *In re Primus*, 436 U.S. 412 (1978) (the First Amendment provides limits). Compare *Turner v. Rogers*, 564 U.S. 431 (2011). Important issues in the public interest and for the profession have been timely raised but not addressed on the merits.

In addition, the revised SCFPA’s “reasonable attorney standard” is not fair notice to the public at large or to parties. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 796 (1984). The showing that a law punishes a “substantial” amount of protected free speech, “judged in relation to the statute’s plainly legitimate sweep,” *Broadrick v. Oklahoma*, 413 U. S. 601, 615 (1973), suffices to invalidate all enforcement of that law, “until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression,” *id.*, at 613. See also *New York v. Ferber*, 458 U. S. 747, 769, n. 24 (1982); *Dombrowski v. Pfister*, 380 U. S. 479, 491, and n. 7, 497 (1965). Further, the revised SCFPA denies a full and fair hearing at trial by jury and fails to require a determination of ability to pay. As such, the

revised SCFPA as applied is a violation of the Eighth Amendment's prohibition against excessive fines. See, e.g., *Timbs v. Indiana*, 586 U.S. 146 (2019).

Moreover, the revised SCFPA, S.C. Code § 15-36-10, is not applicable to the underlying legal malpractice claims against the corporation because the claims arose prior to the effective date of the revised SCFPA. See *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). Under the applicable SCFPA, S.C. Code § 15-36-10 to 50, Judge Hughston's denial of the corporation's motion for summary judgment precludes sanctions. Moreover, Judge Hughston wrote, "Given my opportunities to observe and hear Dr. Holmes, I have no doubt she is sincere in her beliefs about this case," and he found there is no "intent to harm," which precludes sanctions under the applicable SCFPA, S.C. Code § 15-36-10 to 50, then in effect and precludes sanctions under Rule 11, SCRCP. But for the unconstitutional retroactive application of the revised SCFPA, we would not be here. Accordingly, the revised SCFPA cannot pass constitutional muster and is challenged on its face and as applied.

VIII. The conflicted Pro Se Advocate Witness Defendant Caskey is a necessary witness to material facts and, therefore, disqualified as advocate for anyone other than herself including the corporation.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. In the *Brooks* case, the disqualification of the law partner who was a necessary witness was upheld because Rule 3.7, RPC, Rule 407, SCACR, prohibits a lawyer who is a "necessary witness" from serving as an advocate. See *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). The conflicted Pro Se Advocate Witness Defendant Caskey is disqualified as advocate for anyone other than herself herein. She is a "necessary witness" because the "testimony is relevant to disputed, material questions of fact and there is no other evidence available to prove those facts." See

attached copy of letter dated 11.1.16 signed by the advocate-witness Defendant Caskey in violation of, including but not limited to, FDCPA/SCCPC/SCUTPA. The expected testimony is directly related to, including but not limited to, violations of Federal and state statutes giving rise to claims. Accordingly, the conflicted Pro Se Advocate Witness Defendant Caskey is disqualified as advocate for anyone other than herself including the corporation.

IX. Potential and/or actual conflict of interest prohibit the pro se advocate witness defendant's representation of the corporate defendant.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Potential and/or actual conflict of interest prohibit representation of the corporation by the conflicted Pro Se Advocate Witness Defendant Caskey. Rule 1.7, RPC, Rule 407, SCACR. The pro se advocate witness Defendant Caskey publicly advertises the following areas of expertise:

Fair Debt Collection Practices Act

Fair Credit Reporting Act

Truth in Lending Act

Real Estate Settlement Procedures Act

Telephone Consumer Protection Act

Dodd-Frank Act

South Carolina Consumer Protection Code

South Carolina Supreme Court Rules on the Unauthorized Practice of Law

Mortgage foreclosure and documentation issues.

The conflicted Pro Se Advocate Witness Defendant Caskey is the perpetrator of violations of multiple Federal and state statutes including, but not limited to, those listed above. The propriety of the lawyer's own conduct is in question. Accordingly, appellant respectfully enters this motion for disqualification of conflicted Pro Se Advocate Witness Defendant Caskey as advocate for anyone other than herself including the corporation.

X. S.C. Code § 14-8-80 requires a panel of at least three for interpretation of the law and disposition of appeals including the appeal herein.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Significantly and materially, the October 29, 2024, sua sponte summary ex parte dismissal by a single individual is a violation of Legislative intent as well as the letter and spirit of the statutes, S.C. Code § 14-8-80 and S.C. Code § 14-8-220. The Legislature determined that a panel of judges, not a single individual judge, should interpret the law and decide appeals. By statute, three judges are required to constitute a quorum of the Court of Appeals to interpret the law and decide appeals. S.C. Code § 14-8-80. The Legislature enacted the statutory requirement that more than one single individual decide appeals in order to protect the public as well as the Court but also to protect individual judges. Accordingly, reconsideration is respectfully requested.

Further, the ex parte dismissal with no factual support in the record violates statutory authority and the SCACR. Rule 220, SCACR; S.C. Code § 14-8-80. By statute, three judges are required to constitute a quorum of the Court of Appeals in order to decide appeals. S.C. Code § 14-8-80. In fact, the Supreme Court reversed the decision of the Court of Appeals which was heard with only two of the three panel judges present. *State v. McMillan*, 349 S.C. 17, 561 S.E.2d 602 (2002). By analogy, Rule 265(c), SCACR, provides that the appellate court may not on its own order substitution of parties except for death or incompetency: "(F)or any reason other than death or incompetency, substitution SHALL be by motion." Rule 265(c), SCACR. "Substitution for any other reason must be by motion to

the appellate court. Rule 265(c), SCACR.” Toal *et al.*, *Appellate Practice in South Carolina* (2016), Third Ed., p. 377. Under the facts and pursuant to Rule 265(c), SCACR, “the appellate court may not on its own order substitution of parties” and, by inference, may not on its own order sua sponte ex parte summary dismissal by a single individual. Further, Article 1, section 9 of the South Carolina Constitution provides “[A]ll courts shall be public.” S.C. Const. art. I, sec. 9. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law, it is an error-correcting, not law-giving court, and the decisions of the Supreme Court bind the Court of Appeals as precedents. S.C. Const. art. V, sec. 9. It is respectfully submitted that under these facts and pursuant to binding precedent, the SCACR, and/or S.C. Code § 14-8-80, the lower appellate court “may not on its own order substitution of parties” and may not on its own order sua sponte ex parte dismissal by a single individual without reasonable factual support in the record or ROA (record on appeal). “[S]ome minimal inquiry will always be necessary on the part of the appellate court considering the appealability of an order which is alleged to have deprived a party of a mode of trial or a substantial right akin to mode of trial to be preserved inviolate.” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (emphasis supplied). The record reflects there is no motion by the other side, there is no notice, and there is no due process. With no factual support or record, the sua sponte ex parte summary dismissal by a single individual is unauthorized, internally inconsistent, in violation of this Honorable Court’s own SCACR, and outside the scope of authority including statutory authority. At a minimum, briefing prior to dispositional decision is required and under the facts, dismissal is reversible error.

By analogy, Rule 241, SCACR, provides:

An *ex parte* order shall issue **only if**:

- (A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and
- (B) the moving party’s attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required. Rule

241(d)(6), SCACR (emphasis supplied).

The record reflects there is inadequate factual support for the October 29, 2024, *ex parte* opinion and no affidavits or verified petition claims immediate and irreparable injury, loss or damage will result before the opposing party can respond. Moreover, the record reflects there is no required notice and no meaningful opportunity for the adversely affected party to respond at a meaningful time before dismissal. Significantly and materially, the record reflects there is no moving party, no motion, and there is no assertion of exigent or other circumstances to support a claim that notice should not be required. Accordingly, reconsideration is respectfully requested.

XI. Rule 240(j), SCACR, *de novo* appeal.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Pursuant to S.C. Code § 14-8-220, *de novo* review is the standard of review at Rule 240(j), SCACR, appeal herein, which is different than the standard of review for Rule 221, SCACR, rehearing. Ambiguity regarding the proper legal standard pursuant to Rule 240(j), SCACR, appeal is a denial of substantial rights, including but not limited to, due process. Rule 240(j), SCACR, appeal is a S.C. Code § 14-8-220 appeal of an order by an individual judge and the proper legal standard is *de novo*. S.C. Code § 14-8-220. To the extent there is ambiguity, the rule of lenity supports appellant's position. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge. See Rule 27(c), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. See *Griffin v. State*, 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51

S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Accordingly, the legal standard of review under these facts for Rule 240(j), SCACR, appeal is *de novo*.

In addition, pursuant to S.C. Code § 14-8-220, the appellant respectfully submits Rule 240(j), SCACR, appeal herein is *de novo* review which does not include the individual judge who signed the October 29, 2024, order that is the subject of the Rule 240(j), SCACR, appeal. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge. S.C. Code § 14-8-220. Meaningful review requires that a judge not directly or indirectly participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored. In these cases, the Judge or Justice will recuse him or herself from the position of potentially reviewing an order that he or she authored. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR*. Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978) (emphasis supplied). Appellant reasonably questions impartiality regarding the September 10, 2024, impermissible *ex parte* dispositional decision. In the *Rice* case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and

appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are reluctant to confess previous error, but **a reasonable person has a reasonable basis to question the impartiality** of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* At 1117 (emphasis supplied). The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from this oft-cited case is well-stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper—indeed it is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989) (emphasis supplied). Similarly, in this case, "(t)o say the least, it would be unbecoming for a judge" to sit on the Rule 240(j), SCACR, appeal of his own decision. *Rice v. McKenzie*, 581 F.2d 1114, 1117 (4th Cir. 1978). Moreover, in consideration of Legislative intent and the overarching principles incorporated in the State and Federal Constitutions by the framers, due process requires that the appellate court judge who individually signed the ex parte dismissal order not participate, directly or indirectly, on appeal of his own decision which is the subject of the Rule 240(j), SCACR, *de novo* appeal. Ambiguity regarding the requirement of non-participation on Rule 240(j), SCACR, appeal is a denial of due process. To the extent there is ambiguity, the rule of lenity supports appellant's position. Accordingly, Rule 240(j), SCACR, *de novo* appeal and due process require non-participation by the individual judge who signed the sua sponte ex parte summary dismissal without ROA or factual support.

XII. Under the facts, the October 29, 2024, opinion's prejudicial denial of procedural and/or substantive due process is reversible error.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. By way of introduction, the appellant timely motions for reconsideration of the October 29, 2024, opinion in violation of the SCACR, including but not limited to, Rule 220, SCACR: Specifically, a single individual "justice or judge" overlooks meritorious appeal timely served and filed. There is no notice, no opportunity to respond, no factual basis, no citations to case law of any kind, and sua sponte ex parte summary dismissal is based on unreliable hearsay reversible as a matter of law. Hearsay is reversible error. On the other hand, there is an abundant body of law mandating due process including but not limited to, meaningful opportunity to respond at a meaningful time, meaningful judicial review at a meaningful time, and facilitation of appeals with even-handedness, transparency, and fundamental fairness.

Further, in violation of the SCACR Rules, sua sponte ex parte summary dismissal is not proper before this Honorable Court: The SCACR Rules do not allow ex parte dismissal based on issues that have not been raised by the parties. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). The SCACR do not allow judges to act as counsel of record thereby undercutting appearance of a disinterested court. The SCACR do not allow ex parte dismissal based on hearsay, impermissible direct or indirect ex parte contact, and/or pure speculation with no ROA regarding questions that have yet to be presented. There is no factual basis, much less ROA, in support of the ex parte dismissal. Nor is there compliance with the requirements of Rule 220(b), SCACR, which states in pertinent part, "In every decision rendered by the Court of Appeals, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220(b), SCACR. Without factual support, the order is reversible abuse of discretion.

Further, the October 29, 2024, opinion falls short of the requisites under Rule 220,

SCACR, and falls short of the substantial right of adequate explanation for meaningful appellate review. *See, e.g., Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 146 (4th Cir. 2020) (remanded for lack of adequate explanation for meaningful review: "(T)he court disposed of the substance of the issue in a single sentence. See J.A. 252. We need more explanation to conduct meaningful appellate review of the court's disposition."). As such, adequate explanation for meaningful review is respectfully requested.

Moreover, the October 29, 2024, impermissible sua sponte ex parte summary dispositional decision by a single individual is reversible based on denial of due process and fundamental fairness. The American judicial system is an adversary system, not based on inquisitors: In order to ensure the integrity of the judicial system, the norms of that adversarial system prohibit ex parte communications and outside factual research which undercut appearance of a disinterested court. In both civil and criminal cases, in the first instance and on appeal, the principle of party presentation is followed: The parties frame the issues for decision and the courts have the role of **neutral arbiter** of matters the parties present. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (emphasis supplied). The record corroborates predetermined outcome of summary dismissal entered before required notice and meaningful opportunity to be heard at a meaningful time and without a full and fair airing of the merits from each side evidencing lack of impartiality. In this case, the record reflects the author of the impermissible sua sponte ex parte summary dismissal functions as the conflicted Pro Se Advocate Witness Defendant Caskey's advocate and counsel, not as a neutral arbiter, undercutting appearance of a disinterested court. The appellant is prejudiced by the October 29, 2024, denial of procedural and/or substantive due process. But for the prejudicial denial of procedural and/or substantive due process, the outcome should and would be in the undersigned's favor. Sua sponte ex parte summary dispositional decision by a single individual requires, at a minimum, briefing prior to dispositional decision. Accordingly, reconsideration is respectfully requested.

XIII. ADR

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Appellant respectfully requests compliance with ADR rules including Rule 5. It is requested that the lower court's order for good faith mediation and compliance with ADR rules be respected.

XIV. Prejudicial lack of due process in the lower court.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document. Further, denial of substantial rights and impermissible irregularities in the lower court are appealed. As just one example of the misrepresentations and/or irregularities in the lower court, without authorization, due process, or notice to the other side, Defendant(s) caused Charleston County to be erased/inactivated as Defendant in this Charleston County Circuit Court case. The appellant is prejudiced thereby and timely appeals.

Moreover, the attached copy of August 15, 2023, transcript evidences the previous presiding judge herein recusing himself, stating, "I'll have to recuse myself of anything that has to do with" Dr. Holmes based on lack of decorum and lack of civility in the instant case documented in the attached transcript in Case No. 2019-CP-10-06590. That transcript with affidavit documents impermissible ex parte contact regarding sanctions against the undersigned. Conflicted Pro Se Advocate Witness Defendant Caskey filed and admitted in Federal Court that impermissible ex parte contact in order to entice the Federal Court Judge to engage in the same or similar misconduct. Conflicted Pro Se Advocate Witness Defendant Caskey rendered him unre-electable and disqualified herself herein. That Federal Court Judge promptly dismissed conflicted Pro Se Advocate Witness Defendant Caskey noting the Fourth Circuit would reverse. The case of *Burgess v. Stern, infra*, provides that orders rendered after impermissible direct or indirect ex parte contacts are void/voidable:

“South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them. *Id. Aiken County v. BSP Div. Of Envirotech Corp.*, 866 F.2d 661, (4th Cir.1989), evinces the Fourth Circuit Court of Appeals' disapproval of ex parte contacts of this type.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: ‘A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter.’ While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985). The Court in *Wisconsin Steel* noted:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition [311 S.C. 331] is not against “prejudicial” ex parte communications, but against ex parte communications. *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985).”

Burgess v. Stern, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992).

As a matter of public policy, ex parte contacts are prohibited and undermine the integrity of the judicial process. Former Justice Sandra Day O'Connor warned the public about the need for independent judges. Former Justice Sandra Day O'Connor wrote “... many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will.” *Judicial Independence and 21st Century Challenges*, Sandra Day O'Connor, The Bench, July/August 2012. As she explained, “[t]he reason why judicial independence is so important is because there has to be a safe place where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out political influences.” *Id.* (emphasis supplied). Public policy, legislative intent, statutory authority, State and Federal case law, State and Federal Rules of Court, State and Federal Constitutional law, and fundamental fairness prohibit direct or indirect impermissible ex parte contacts. The transcript reflects the previous presiding judge herein recused himself, stating, “I’ll have to recuse myself of anything that has to do with” Dr. Holmes on August 15, 2023, which voids his order entered in the instant case

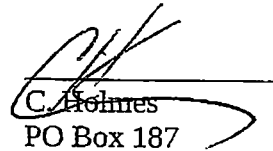
thereafter. Accordingly, the previous presiding judge recused himself voiding his intermediate orders including dismissal which is hereby requested.

Moreover, Article 1, section 9 of the South Carolina Constitution provides “[A]ll courts shall be public.” S.C. Const. art. I, sec. 9. Intervening binding precedent, in the *Price* case, *infra*, provides that if there is no factual record of the impermissible ex parte contact, it is axiomatic there can be no meaningful judicial review. “Section 14-5-10 of the South Carolina Code (2017) provides, ‘The circuit courts herein established shall be courts of record’” *State v. Jeroid J. Price*, S.C. Sup Ct. App. Case No. 2023-000629 filed Sept. 6, 2023. *See, e.g., Orpiano v. Johnson*, 687 F.2d 44 (4th Cir. 1982) (“(F)ailure even to have a transcript filed ... was reversible error.”). Further, the Fourth Circuit case of *Navistar* ruled that a lower court hearing after-the-fact is no substitute for a pre-decision hearing. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36 (4th Cir. 1995). The record reflects direct or indirect impermissible ex parte contacts to evade the merits without due process including required notice, meaningful opportunity to be heard at a meaningful time, and full, fair, adequate, and meaningful record on appeal for full, fair, and meaningful judicial review. The Fourth Circuit ruled that overreaching attempts to dismiss and/or deny full and fair consideration on the merits are reversible as a matter of law. *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 188 (4th Cir. 2013); *see Pillay v. INS*, 45 F.3d 14 (2nd Cir. 1995) (same). *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). *See* S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). *See also* Adam A. Milani & Michael R. Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts*, 69 TENN. L. REV. 245, 251 n.16 (2002).

CONCLUSION

For substantial justice affecting substantial rights, the appellant respectfully requests compliance with the South Carolina Rules of Court including Rule 262, SCACR, and the authorized contact information for self-represented parties and submits motion for reconsideration; if denied, motion for Rule 240(j), SCACR, appeal of ex parte dismissal by a single individual; and if denied, Rule 221, SCACR, petition for rehearing. In the alternative, the October 29, 2024, sua sponte ex parte summary dismissal herein without factual support or jointly-filed ROA should be vacated and deferred until final briefs and the ROA are filed.

Respectfully submitted,



C. Holmes
PO Box 187
Sull.Isd., SC 29482-0187
843.883.3010

EXHIBIT A



LINDEMANN

Law Firm, P.A.

Telephone (803) 881-8920

Facsimile (803) 862-1181

5 Calendar Court, Suite 202 (29206)

Post Office Box 6923

Columbia, South Carolina 29260

October 8, 2024

ANDREW F. LINDEMANN*

Direct Dial: (803) 881-8921

Email: andrew@idlawsc.com

**Also Admitted in North Carolina*

Dr. Cynthia Holmes
Post Office Box 187
Sullivan's Island, South Carolina 29482

RE: J. Doe v. James Y. Becker, individually, M. M. Caskey, individually, Haynsworth Sinkler
Boyd, P.A., Mikell R. Scarborough, in official capacity, and individually re unofficial acts,
and Charleston County
Civil Action Number: 2019-CP-10-6590
Claim Number: C1127
Our File Number: 104.20052

Dear Dr. Holmes:

Please find enclosed and served upon you the **Notice of Motion and Motion for Continuance of Defendants Scarborough and Charleston County** and the *proposed Order Granting Motion for Continuance of Defendants Scarborough and Charleston County* with regard to the above referenced matter. I have also enclosed a copy of my email of today's date sent to Angie Rigney with the Charleston County Clerk of Court's Office.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Mary McFarland Caskey, Esquire (*w/out Enclosures, Via Email Only*).

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

J. Doe,)

Plaintiff,)

v.)

James Y. Becker, individually,)
M. M. Caskey, individually, and)
Haynsworth Sinkler Boyd, P.A.,)
Mikell R. Scarborough, in official capacity,)
and individually re unofficial acts,)
and Charleston County,)

Defendants.)

Civil Action No. 2019-CP-10-6590

**NOTICE OF MOTION AND
MOTION FOR CONTINUANCE OF
DEFENDANTS SCARBOROUGH AND
CHARLESTON COUNTY**

TO: J. DOE, PRO SE PLAINTIFF

MARY M. CASKEY, COUNSEL FOR DEFENDANTS BECKER, CASKEY, AND
HAYNSWORTH SINKLER BOYD, P.A.

YOU WILL PLEASE TAKE NOTICE that counsel for the Defendants Mikell R. Scarborough and Charleston County hereby moves before the Chief Administrative Judge of the Ninth Judicial Circuit at the Charleston County Judicial Center, Charleston, South Carolina, for an Order, pursuant to Rule 40(i), SCRCF, continuing the October 14, 2024 motion hearing on the Plaintiff's Amended Motion for Sanctions, for Hearing, Recusal, and Reconsideration.

The grounds for this motion are based on the following discussion:

I. The undersigned counsel for the Defendants Mikell R. Scarborough and Charleston County is a solo practitioner and is scheduled to personally appear at 9:30 a.m. in Sumter County and Orangeburg County for jury trial dockets that morning. The undersigned is

also scheduled for WebEx motions hearings in multiple cases in Richland County at 9:30 a.m. that morning. Lastly, he has a status conference with Judge Roger M. Young, Jr. via WebEx scheduled at 11:00 a.m. on that date in the "Road Maintenance Fee" cases that have been consolidated and assigned to Judge Young by Order of the Chief Justice. Due to these scheduling conflicts, the undersigned counsel respectfully requests that the in-person hearing in this case be re-scheduled.

As the Plaintiff is proceeding pro se, the undersigned counsel has not conferred with her prior to the filing of this motion. The undersigned has conferred with counsel for Defendants James Y. Becker, M. M. Caskey, and Haynsworth Sinkler Boyd, P.A. by email, and Mary Caskey has consented to this request by reply email.

This motion is further based on the rules of court and such additional information that may be made available to the Court.

LINDEMANN LAW FIRM, P.A.

BY: s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

*Counsel for Defendant Mikell R. Scarborough and
Charleston County*

October 8, 2024

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

J. Doe,

Plaintiff,

v.

James Y. Becker, individually,
M. M. Caskey, individually, and
Haynsworth Sinkler Boyd, P.A.,
Mikell R. Scarborough, in official capacity,
and individually re unofficial acts,
and Charleston County,

Defendants.

Civil Action No. 2019-CP-10-6590

**ORDER GRANTING MOTION FOR
CONTINUANCE OF DEFENDANTS
SCARBOROUGH AND
CHARLESTON COUNTY**

The Defendants Mikell R. Scarborough and Charleston County moved for a continuance of the October 14, 2024 hearing on Plaintiff's Amended Motion for Sanctions, for Hearing, Recusal, and Reconsideration for the reasons provided in the Motion for Continuance filed October 8, 2024. Upon finding good cause for the request, the continuance is hereby granted.

AND IT IS SO ORDERED.

Jennifer B. McCoy
Chief Administrative Judge
Ninth Judicial Circuit

Jennifer Baker

From: Andrew Lindemann
Sent: Tuesday, October 8, 2024 2:25 PM
To: 'arigney@charlestoncounty.org'
Cc: 'Caskey, Mary'; Jennifer Baker; 'McCoy, Jennifer Law Clerk (Joseph Grooms)'; 'mdukes@sccourts.org'
Subject: Doe v. Becker - 2019-CP-10-6590
Attachments: Proposed Order Granting Mot. for Continuance (4882-3904-7917).docx; ECF-Mot. for Continuance (4865-0596-1709).pdf

Angela:

I need some assistance. The Plaintiff's Amended Motion for Sanctions, for Hearing, Recusal, and Reconsideration is scheduled to be heard by Judge Marvin Dukes next Monday, October 14th, at 9:30 am. I am trying to file the attached Motion for Continuance. The Plaintiff is pro se, and I do not have an email address for her.

I represent the Defendants Mikell R. Scarborough and Charleston County. When I went to e-file this continuance motion, those Defendants are no longer shown as "active," and as a result, I am unable to e-file this motion. I am not sure why that is the case. In the Plaintiff's Amended Motion for Sanctions, for Hearing, Recusal, and Reconsideration, she refers to "defendant" using the singular, so I am not certain against which Defendant the motion is directed. However, if the current motion is not directed against Defendants Scarborough and Charleston County, then the continuance is not needed.

Can you provide me with some guidance on this? I am also copying the clerks for Judges McCoy and Dukes. I will mail a copy of this email to the pro se Plaintiff.

Thanks.

Andrew

Andrew F. Lindemann
Lindemann Law Firm, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldlawsc.com

EXHIBIT B

Bank of America

Cashier's Check

No.

0912453

30-1/1140

40-14-0003B 7-1999

Date

CHARLESTON

CHARLESTON-200 MEETING STREET

02-01-00

Pay To The
Order Of

WILL BOYD

*****43,000.00**

If this check is not
returned for
cancellation by the
remitter or presented
for payment by the
payee or an endorsee
within one year after
its date, it will be
subject to a
nonrefundable
dormancy fee of \$5.00
per month thereafter.

FORTY THREE THOUSAND AND 00/100

Dollars

NOT VALID IF OVER

\$43,000.00

For

72900 004 071129 02-01-00 12:57 OFFICIAL CK SALE

\$43,000.00 Non Negotiable

Bank of America, N.A.
San Antonio, Texas

CYNTHIA HOLMES MD
Remitter (Purchased By)

004071129

Authorized Signature

Customer Copy

Retain for your records

001641000116

2024/11/13 20:55:23 9 /54

ENDORSE CHECK HERE

X For Deposit Only
Acct of SINKLER & ROY, PA
by Bill Boyd

FOR DEPOSIT ONLY
SINKLER & ROY, PA

DEPOSITORY BANK ENDORSEMENT

0815423

EXHIBIT C

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1689)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

MARY M. CASKEY
DIRECT DIAL NUMBER 803.540.7870
EMAIL mcaskey@hsblawfirm.com

November 1, 2016

Cynthia Holmes
Post Office Box 187
Sullivan's Island, SC 29482

Re: Payment Demand for Judgment in favor of Haynsworth Sinkler Boyd, P.A., filed on November 18, 2009 in Charleston County, South Carolina
HSB File No. 04625.1439

Dear Ms. Holmes:

We are writing you to collect on the judgment entered in favor of our firm, Haynsworth Sinkler Boyd, P.A., on November 18, 2009, in the Court of Common Pleas, Charleston County, South Carolina.

The amount due on the judgment is \$200,000.00, plus interest from the date of entry of the judgment calculated at the interest rate as set forth in the subject loan documents that gave rise to the judgment. The total amount due is \$301,304.11 as of November 1, 2016, and we demand immediate payment of the total amount due.

Payment should be made to Haynsworth Sinkler Boyd, P.A., and delivered to this firm at Post Office Box 11889, Columbia, South Carolina, 29211, or at 1201 Main Street, Suite 2200, Columbia, South Carolina, 29201.

Please respond to this letter within ten (10) days. If you fail to respond, legal action may be taken against you to collect the judgment. Such action could include seizure and judicial sale of your property to satisfy the judgment.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey

Mary M. Caskey
mcaskey@hsblawfirm.com
Telephone: (803) 540-7870

MMC/hh

EXHIBIT

D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Cynthia Holmes, M.D.,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

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

FILED
2017 SEP 29 PM 2:20
JULIE GLENN, CLERK
COURT

DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") hereby move this Court to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not have any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they request that they be dismissed as Petitioners, and that Haynsworth Sinkler Boyd, P.A. be the sole remaining petitioner in this action. There are no pending claims asserted by Plaintiff against Defendants in this matter. A proposed order is attached.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76198

Post Office Box 11889

Columbia, South Carolina 29211

Telephone: (803) 779-3080

Facsimile No: (803) 765-1243

ATTORNEYS FOR DEFENDANTS

September 22, 2017

EXHIBIT E

This is to advise that the title in the above matter has been changed to read as follows:

Cynthia Holmes, Appellant,

v.

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

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

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

Jonny Abbott Kitching

CLERK

cc: James Y. Becker, Esquire
Manton M. Grier, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1880
FAX (803) 734-1839
www.sccourts.org

February 24, 2017

Cynthia Holmes
PO Box 187
Sullivan's Island SC 29482

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

Dear Dr. Holmes:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

EXHIBIT F

South Carolina Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

Appellate Case No. ...

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2017-000266

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	Cynthia Holmes v. Haynsworth (3)	Case Status:	Remittitur
	View Full Title		
Consolidated:			
Filed Date:	02/13/2017	Oral Argument Date:	
Disposition Date:	04/07/2017	Disposition Type:	Order
Remittitur Date:	11/28/2017		
Lower Court or Tribunal:	Charleston (2007CP1001444)		

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Cynthia Holmes	N	Chalmers Carey Johnson
Respondent	James Y. Becker	N	Mary M Caskey
Respondent	Manton M. Grier	N	Mary M Caskey

EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
_____)

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

J. DOE (C. HOLMES))
PLAINTIFF)
vs.)

PARTIAL
TRANSCRIPT OF RECORD

MANTON GRIER, JAMES Y. BECKER,)
HAYNSWORTH SINKLER & BOYD, PA,)
DEFENDANTS)
_____)

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

A P P E A R A N C E S:

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

JOHN FREEMAN -- CROSS BY MS. HOLMES

86

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

JOHN FREEMAN -- CROSS BY MS. HOLMES

87

- 1 I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD
- 2 BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH
- 3 CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
2021-CP-10-05739

J. Doe,)
)
Plaintiff,)
)
vs.)
)
Lauren Thompson,)
)
Defendant.)
-----)

TRANSCRIPT OF HEARING

 ORIGINAL

August 15, 2023
Charleston, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge Presiding

A P P E A R A N C E S:

For the Defendant:
Joseph John Tierney, Esquire
Rogers Townsend
(843) 737-8668

Cathy L. Young, CVR-M
Official Circuit Court Reporter
P.O. Box 4604
Beaufort, SC 29903

J. DOE VS. LAUREN THOMPSON - 2021-CP-10-05739

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J. DOE VS. LAUREN THOMPSON - 2021-CP-10-05739

1 PROCEEDINGS

2 * * * * *

3 THE COURT: J. Doe vs. Lauren Thompson.

4 MR. TIERNEY: Good morning, Your Honor.

5 THE COURT: Good morning. How are you?

6 MR. TIERNEY: I'm good, sir. Joe Tierney
7 on behalf of Roper Hospital.

8 THE COURT: All right. Mr. Tierney, we've
9 got a little bit of a problem, and I want to get you
10 out of here sooner than later. Ms. Holmes has filed
11 a grievance against me. It has not been ruled upon.
12 I have answered it. You obviously know J. Doe is
13 Cynthia Holmes, correct?

14 MR. TIERNEY: I do, Your Honor.

15 THE COURT: Okay.

16 MR. TIERNEY: Yes, sir.

17 THE COURT: So it has not been ruled on,
18 nor have I gotten any indication as to what the
19 outcome of that is. I have answered it. I have
20 spoken to them on numerous occasions. They're fully
21 aware of what's going on and so obviously I'll have
22 to recuse myself of anything that has to do with Ms.
23 Holmes.

24 MR. TIERNEY: Yes, sir.

25 THE COURT: I apologize about dragging you

J. DOE VS. LAUREN THOMPSON - 2021-CP-10-05739

1 here.

2 THE COURT TO CLERK: Will you just continue
3 him to the next roster so he doesn't have to be
4 jerked around?

5 MADAM CLERK: Yes, sir.

6 MR. TIERNEY: Yes, it's been 16 months, so
7 if I could get on the next roster?

8 THE COURT: Just put him on the next --
9 when is the next one?

10 MADAM CLERK: I believe October -- we have
11 one in September. I'm just not sure of the actual
12 date.

13 MR. TIERNEY: And for the Court's
14 edification, the Doctor requests that we have a
15 personal -- in-person hearing, so if that affects
16 the placement, I'm fine with doing it whenever there
17 is an in-person.

18 MADAM CLERK: I will have Angela or Joy
19 reach out to you to confirm the date with you.

20 MR. TIERNEY: Thank you.

21 THE COURT: Let's make sure he gets on the
22 next one as soon as possible.

23 Sorry about that.

24 MR. TIERNEY: That's all right. Thank you,
25 Your Honor.

J. DOE VS. LAUREN THOMPSON - 2021-CP-10-05739

1 THE COURT: Yes, sir.

2 MS. THOMPSON: Thank you, Your Honor.

3 (Whereupon, the hearing was concluded at

4 9:53 a.m.)

5 - - -END OF TRANSCRIPT- - -

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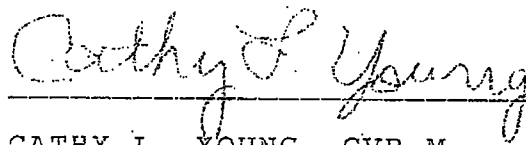
J. DOE VS. LAUREN THOMPSON - 2021-CP-10-05739

CERTIFICATE OF REPORTER

I, Cathy L. Young, Certified Verbatim
Reporter/Master for the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
digitally recorded hearing in the Circuit Court for
Charleston County, South Carolina, on the 15th day
of August, 2023.

I do further certify that I am neither of
kin, counsel, nor interest to any party herein.

This, the 6th of October, 2023

A handwritten signature in cursive script, reading "Cathy L. Young", is written over a horizontal line.

CATHY L. YOUNG, CVR-M

C/A No.: 2019-CP-10-6590

STATE OF SOUTH CAROLINA)

)

AFFIDAVIT

COUNTY OF CHARLESTON)

)

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

1. I am the plaintiff, of legal age, and competent to state the matters herein.
2. This affidavit is submitted in support of Case No. 19-6590.
3. Without being disagreeable, there is disagreement.
4. Based on change in circumstances and new evidence, motion to recuse is respectfully submitted.
5. As set forth herein and in the record which is incorporated in full, intervening new evidence supports recusal. An objective reviewer observes that a reasonable person should and would question impartiality requiring recusal which is hereby requested.
6. Moreover, pursuant to Supreme Court Order(s) including but not limited to Administrative Order No. 2021-01-08-02 in effect at all pertinent times, motion to recuse requires full and fair hearing prior to entry of any other order(s) which also require hearings and which are null and void.
7. It is respectfully submitted there has been no hearing which is mandatory.
8. Plaintiff respectfully requests opportunity to be served with defendant(s) filing herein which has not been timely served or received. Plaintiff requests a meaningful opportunity to file a response at a meaningful time before disposition on the motion to recuse, which supports our request for this Honorable Court to take the motion to recuse under advisement in order to provide meaningful opportunity to respond and to allow a full and fair airing of important public issues including but not limited to, denial of due process, civil rights, and State and Federal Constitutional guarantees during extraordinary and unprecedented public health and affiliated economic emergencies.

9. Significantly and materially, Conflicted Pro Se Advocate Witness Caskey is prohibited by the Rules of Professional Conduct from representing any party other than herself and her misconduct herein is an example of precisely why. Rule 3.7, RPC, Rule 407, SCACR. Conflicted *pro se* advocate Caskey is disqualified as a necessary witness and perpetrator of filing false affidavits and other wrongdoing against unrepresented parties. *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477. *See, e. g., McRae v. Minor* (S.D. Miss., 2017) [“Specifically, the Court finds that *pro se attorneys* should be disqualified from representing any party other than themselves in this case, including the *corporate defendant*.” (Emphasis supplied.)]. “As the ethical consideration (*South Carolina Rule 3.7, RPC, Rule 407, SCACR*) suggests, even in the ‘usual’ case the advocate as witness poses myriad threats to the integrity and reliability of the judicial process. Those difficulties multiply when the lawyer testifies to his own *impropriety*. The importance of the lawyer’s credibility as a witness, and the necessity of an opportunity effectively to cross-examine him, increase when the lawyer testifies.... Furthermore, there may arise in such an instance issues not only of credibility and effective advocacy, but of potentially differing interests of the lawyer and his client.” *Dasher v. Stripling*, 685 F.2d 385 (11th Cir., 1982) (emphasis supplied).

Moreover, plaintiff asserts claims including, but not limited to, negligence against *pro se* corporation and its *pro se* advocate Caskey. “In addition, fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended. *See, e.g., Burnett v. Sharp*, 328 S.W.3d 594 (Tex.App.2010) (holding the plaintiff’s claim against a former attorney for breach of fiduciary duty for failure to return the unearned portion of a retainer fee constituted a viable claim even though the attorney’s representation had ended).” *Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (SC 2011). *Pro se* corporation’s lack of verified petition is a fatal defect precisely because the proceeding is summary. *See Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). There is no common law litigation immunity for attorneys covered by the FDCPA(SCCP/SCUTPA). *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007)(emphasis

supplied). “The purpose of this immunity is to preserve the integrity of our judicial system, not to assist a self-interested party who allegedly lies....” *Todd v. Weltman, Weinberg & Reis Co.*, 434 F.3d 432 (6th Cir. 2006) (emphasis supplied).

10. Defendants and defendant corporation made representations to the Federal Court in order to induce that Court’s reliance and filed the following statement in Federal Court:

Judge Price has directed that the attorneys for defendants not appear at a hearing on the matter, while he considers sanctions against the plaintiff.

The record reflects the plaintiff has not been copied or promptly notified of that, there is no pending motion for sanctions against the plaintiff. Based on defendants and defendant corporation’s accusations in open Federal Court, Judge Price directly or indirectly engaged in impermissible ex parte communications electronically/orally. The Federal Court summarily dismissed defendants and defendant corporation. Despite RPC-Prohibited, Conflicted Pro Se Advocate Witness Caskey’s objection, the Federal Court dismissed the bankruptcy at plaintiff’s request.

11. Further, change in circumstance includes but is not limited to, the Federal Court dismissal of bankruptcy. The record and transcript reflect bankruptcy discrimination in whole or in part and this change in circumstance supports reconsideration.

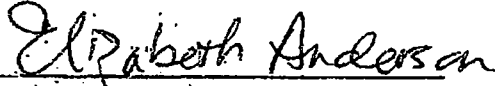
12. In addition, the rule of lenity as well as change of circumstances support reconsideration. In the interim, the South Carolina Supreme Court recently declined to find any violation for any filing herein, the attached District Court Order as well as the Federal Court Judge who dismissed the bankruptcy both declined to find any violation, and the S.C. Commission on Lawyer Conduct recently incorporated the following ruling which states in relevant part: “Committee recognizes that Petitioner has made numerous filings in the ongoing efforts by Haynsworth, Sinkler Boyd, P.A., to collect the sanctions it was awarded, but Committee finds that such motions do not violate the injunctions.” Accordingly, change in circumstances and/or the rule of lenity support recusal including but not limited to, objective and record evidence of favoritism/bias.

FURTHER THE AFFIANT SAITH NOT.


C. Holmes
PO Box 187
Sullivans Isd., SC 29482-0187

SWORN to before me this

15 day of April, 2022


Notary Public for South Carolina
Comm. Expires: 4/4/2023

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

Remaining State Law Claims

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

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

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

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

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

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timely asserted initially through the filing of this action.

Conclusion

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

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

October 31, 2018
Charleston, South Carolina

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) Case No. 2019-CP-10-06590

3 -----x
4 J. DOE,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 JAMES BECKER, et al.,)

8 Defendants.)
9 -----x

April 19, 2022

10 B E F O R E:

11 The Honorable Bentley Price, Presiding Judge

12 A P P E A R A N C E S:

13 C. Holmes, on behalf of the Plaintiff

14 Mary Caskey, Esq.

Attorney for the Defendant

15 Jim Davis, Esq.

16 Attorney for Defendant Scarborough
17
18
19
20
21
22
23

24 Recorded by: Court Monitor/Caressa Johnson

25 Transcribed by: Bobbi Fisher
SC Official Court Reporter III

I N D E X

WITNESS/DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 11:00 a.m.):

THE COURT: All right. What is the next motion that we need to hear and whose is it?

MS. HOLMES: Good morning, Your Honor.

THE COURT: All right. You could --

MS. HOLMES: Good morning to all.

THE COURT: All right. Is it y'all's motion?

MS. HOLMES: No, it's mine.

MS. CASKEY: No, Your Honor.

THE COURT: All right. Is it on the docket for today?

MS. CASKEY: Yes.

THE COURT: What number?

MS. HOLMES: 6590.

THE COURT: The infamous 6590.

MS. HOLMES: 2019-6590.

THE COURT: All right. And this is a Rule 59(e) motion for sanctions. And then it says amended motion for sanctions. All right.

Is this the 6590 that she's not allowed to file anything in?

MS. CASKEY: Yes.

THE COURT: Why did the clerk's office accept the filing?

MS. CASKEY: Because she filed it under J. Doe.

Originally, you dismissed it a year ago. And they kept -- she

1 filed a motion to reconsider, and they kept scheduling it in
2 front of a different judge, and so it's finally back to you to
3 decide how to handle it. I thought your prior ruling was
4 pretty clear on her ability to hire -- file things, but...

5 MS. HOLMES: Your Honor -- Your Honor, I have some
6 materials to hand up.

7 THE COURT: Well, what if they get confused in the
8 clerk's office?

9 (The Court and clerk have a discussion off the record.)

10 MS. CASKEY: They gave it a new case number when she
11 filed under J. Doe, and so this case number is not tied to
12 that. We contacted them before we filed a motion to dismiss,
13 Judge Scarborough, and then I filed on behalf of all the
14 Haynesworth people. You granted that motion. She immediately
15 filed a motion to reconsider, and that's -- we're here on
16 that, for the motion to reconsider the original dismissal of
17 the case on multiple grounds.

18 MS. HOLMES: Actually, Your Honor, we are here --

19 THE COURT: I know what happened.

20 MS. HOLMES: Your Honor --

21 THE COURT: Hold on.

22 When she filed the motion to reconsider, she wasn't
23 allowed to file it, and I threw it in the trash.

24 MS. CASKEY: Okay.

25 THE COURT: So that's what happened.

1 MS. CASKEY: That sounds possible. I think there have
2 been some other filings that have occurred too, so I wasn't --
3 I wasn't 100 percent sure what we were doing today.

4 THE COURT: What happens is, when she files something,
5 they don't file it. They put it in my box -- for my judicial
6 box, and I take it from the judicial box to the trash can
7 that's behind me. But I bet one of them got slipped through
8 and didn't go to my box and was actually filed.

9 MS. CASKEY: That would explain why it got scheduled in
10 front of all the other judges.

11 THE COURT: I bet -- and it's been sitting there,
12 unbeknownst to me or y'all because I have been in the 14th
13 Circuit for two years.

14 MS. CASKEY: Yes.

15 MS. HOLMES: Your Honor, we're actually here today on a
16 motion to recuse. And I do have some material that has been
17 filed, but I would like to hand it up, that supports that.
18 And I would like to be heard on that today.

19 THE COURT: How -- how can I find the motion that she --
20 can you find it and pull it up?

21 MS. HOLMES: Your Honor --

22 THE COURT: Just hand her [verbatim] whatever she's got
23 -- wants to hand me, please, real quick.

24 MR. DAVIS: Judge, just for the record, I'm Jim Davis.
25 I'm here for Andrew Lindemann, who is representing Judge

1 Scarborough in Charleston County. So just wanted to note my
2 appearance for the record.

3 MS. CASKEY: And I apologize; I didn't state mine, but
4 I'm Mary Caskey. Thank you.

5 MS. HOLMES: Your Honor --

6 THE COURT: Hold on.

7 MS. HOLMES: We would submit that there have been some
8 recent rulings by the Supreme Court that are pertinent, and
9 other courts, that support Plaintiff's position as outlined in
10 the material handed up.

11 (Pause in the proceedings while the Court reviews
12 documents.)

13 THE COURT: Ms. Caskey, you're in Columbia; correct?

14 MS. CASKEY: Yes, Your Honor, I am.

15 THE COURT: All right. Well, I'm going to get you out of
16 here before lunch --

17 MS. CASKEY: Thank you.

18 THE COURT: -- so you can at least go to somewhere nice.

19 MS. CASKEY: Thank you.

20 THE COURT: He's stuck here.

21 MR. DAVIS: I'm actually from Columbia too, Judge.

22 THE COURT: Dang. Well, y'all two can go to lunch. How
23 about that? 167 Sushi is good, 167 Raw's good, but you're
24 going to have to hurry because it gets busy. It's tourist
25 season now.

1 All right. So your motion somehow got filed in March 8th
2 of 2021. It is coined as a Rule 59 motion and motion for
3 sanctions. In your motion, you have asked that the Court,
4 without being disagreeable, there's a disagreement that due
5 process requires notice of meaningful opportunity to be heard
6 and meaningful judicial review. Plaintiff respectfully
7 requests a hearing, including but not limited to sanctions
8 hearing and other relief for which there has been no notice,
9 no hearing, and no meaningful opportunity to be heard.

10 All right. So this is a sanctions motion. Is that what
11 you have coined it as?

12 MS. HOLMES: Your Honor, it's a Rule 59 motion --

13 THE COURT: I understand what that rule is.

14 MS. HOLMES: The Rule 59 motion refers to the previous
15 motion for recusal, and it was filed for reconsideration on
16 recusal. And, now, there is intervening new evidence,
17 previously unavailable, which supports revisiting the recusal,
18 which we are requesting be heard today. It is documented in
19 the affidavit, which was handed up.

20 THE COURT: Okay.

21 MS. HOLMES: So I am requesting that Rule 59 motion on
22 the recusal, based on changed circumstances and new evidence
23 not available at that time.

24 Good morning to all and thank you, Your Honor, for
25 hearing this today. It will be brief. May it please the

1 Court?

2 THE COURT: Yes, ma'am.

3 MS. HOLMES: Without being disagreeable, there is
4 disagreement, as this is a very contentious case. The record
5 will reflect I have submitted some material, which I will be
6 referring to. It was timely filed and timely served.

7 The other side's submittal, if any, has not been
8 received, and we would request an opportunity to receive a
9 copy and to file written or respond in writing and provide a
10 written response.

11 In sum, we would rely on the record, Plaintiff's motions,
12 memos, and affidavits, which are incorporated in full by
13 reference. Based on changed circumstances, we are here on
14 motion to recuse due to intervening new evidence documented
15 material. Case law directs that other motions should be held
16 in abeyance pending disposition on recusal because other
17 rulings would support recusal based on favoritism due to
18 predetermined outcome of denial of recusal before full and
19 fair consideration of the merits.

20 In addition, there are recent rulings by the Supreme
21 Court, as referenced in the material, and other courts, which
22 support Plaintiff's position as outlined in the affidavit.
23 The unavailable evidence regards Ms. Caskey's accusations in
24 federal court for that federal court's reliance which compel
25 her disqualification.

1 We request, one week from today, to provide meaningful
2 opportunity to respond at a meaningful time for a disposition,
3 particularly given Defendant's pattern and practice of failing
4 to timely file or timely copy, rather, the other side, which
5 is hereby requested accordingly. We request the Court's kind
6 consideration of our written response to Defendant's arguments
7 taken under advisement and the plaintiff will timely file that
8 response.

9 Again, thank you, Your Honor, for hearing this matter
10 today, and nothing further.

11 (Pause in the proceedings while the Court reviews
12 documents.)

13 THE COURT: Ms. Caskey, I -- she filed a motion to
14 reconsider the reconsideration? That's what happened, and
15 that's basically what went through.

16 MS. CASKEY: Something along those lines.

17 THE COURT: Yeah. I mean, I'm not blaming the clerk's
18 office.

19 MS. CASKEY: Yeah.

20 THE COURT: You know who I'm blaming, but I'm just saying
21 it's --

22 MS. CASKEY: My recollection was that you dismissed it.
23 You filed -- we filed an order, and then a motion very similar
24 to this followed, another motion filed. I'll be candid, Your
25 Honor, I'm defending this suit in the district court, I have

1 defended it in the Fourth Circuit, I have had to defend
2 motions like this in bankruptcy court against the same --

3 THE COURT: Oh, I'll agree with all that.

4 MS. CASKEY: So my point is --

5 THE COURT: And it gets confusing.

6 MS. CASKEY: -- I apologize for not remembering, but my
7 recollection is, yes, this is a motion to reconsider an order
8 denying a motion to reconsider.

9 THE COURT: Which doesn't --

10 MS. CASKEY: Which is not allowed -- which is why I did
11 not file anything in opposition.

12 THE COURT: Of course, because it doesn't exist. There's
13 no such thing as a reconsideration of a reconsideration.

14 MS. CASKEY: Correct.

15 THE COURT: You can just take it to the Court of Appeals
16 from there.

17 MS. CASKEY: Exactly.

18 MS. HOLMES: Your Honor, we would dispute that it is a
19 reconsideration of a reconsideration, and it is an appropriate
20 Rule 59 motion. Thank you.

21 THE COURT: All right. I'm going to --

22 MS. HOLMES: And, further, I believe it was supposed to
23 be set for hearing during the time when there was a COVID
24 administrative order that -- that suspended all in-person
25 hearings, and that's why it's here today. That's my

1 recollection, and I'm happy to review the docket and support
2 that for you.

3 THE COURT: I'm going to read something to you. All
4 right, Ms. Holmes? And you tell me if you understand it. Is
5 that fair enough?

6 MS. HOLMES: Your Honor, may I ask you to read our
7 affidavit first? Because I believe it responds to that.

8 THE COURT: To what?

9 MS. HOLMES: I believe it may respond to your concern, if
10 you would -- you know, we filed it yesterday timely. I was
11 hoping that it would be seen today.

12 THE COURT: I'm not asking that. I'm asking, if I read
13 something to you, I will give you the opportunity to respond,
14 but I'm asking, if I read something to you, will you agree
15 that you understand it?

16 MS. HOLMES: It sounds like I need a lawyer here, and I
17 would request an opportunity to have a lawyer.

18 THE COURT: As to the motion for recusal, the Court must
19 address the affidavit filed by the plaintiff on December 10th
20 of 2020. The affidavit purports to accuse this Court of
21 personal bias by accusing the plaintiff of allegedly going
22 into his -- or, excuse me, by accusing -- the plaintiff is
23 accusing of allegedly going into his personal mailbox at the
24 Charleston County Judicial Complex. Plaintiff mistakenly
25 (indiscernible) explanation by which the Court received some

1 of the filings. When the plaintiff is unable to manipulate
2 the system, the clerk's office will often recognize the
3 plaintiff and will refuse to file the documents and simply
4 place them in the interoffice mailbox. At no time did the
5 Court believe Plaintiff physically accessed to the Court's
6 internal mailbox. By way of an example and during the
7 pendency of this order, Plaintiff attempted to file a 78-page
8 motion to reconsideration, which was not filed but, rather,
9 placed in the Court's box on December 24th, 2020. For the
10 reasons stated above, the motion to recuse was denied.

11 It is abundantly clear exactly why the Supreme Court of
12 South Carolina ordered such an extreme abolishment.
13 Plaintiff's continued frivolous actions and total disregard
14 has cost attorneys, court staff, judges, and even taxpayers
15 hours of time and almost a quarter million dollars in wasted
16 attorneys' fees.

17 Therefore, Plaintiff's motion to reconsider is denied.
18 Plaintiff shall immediately cease an attempt to violate any
19 order of this Court or the Supreme Court of South Carolina.
20 The plaintiff is sanctioned \$5,000, and this case shall be
21 closed immediately.

22 Ordered by myself, February 11th, 2021.

23 Did you receive that order?

24 MS. HOLMES: I have seen that order, yes. And I have
25 filed a response to that because it's a misinterpretation of

1 what happened.

2 THE COURT: All right. Do you agree that you have
3 disobeyed my order?

4 MS. HOLMES: I do not think I have disobeyed it, no.

5 THE COURT: Okay. Do you think you disobeyed the Supreme
6 Court's order?

7 MS. HOLMES: I do not, and there is -- if you read the
8 affidavit, you will find that the South Carolina commission on
9 lawyer conduct recently determined "Committee recognizes that
10 Petitioner has made numerous filings in the ongoing efforts by
11 Haynesworth to collect the sanctions it was awarded. But
12 committee finds that such motions do not violate injunctions."

13 Also, the South Carolina Supreme Court has found that
14 there was no violation, and the federal court judge has found
15 there was no violation, and the -- another federal judge, who
16 dismissed the bankruptcy, declined to find any violations.

17 If nothing else, it's evidence that this is ambiguous
18 and -- and the rule of lenity supports recusal here and
19 supports Plaintiff's position.

20 THE COURT: All right. You have been ordered by the
21 Supreme Court not to have any filings in Case No. 6590. You
22 have been ordered by this Court for no filings of 6590. So
23 I'm going to deny your motion and sanction you \$5,000. Good
24 luck.

25 MS. HOLMES: Your Honor, I am not --

1 THE COURT: Ma'am, ma'am, I'm not going to hear another
2 word. That's my order.

3 MS. HOLMES: For the record?

4 THE COURT: Absolutely not.

5 All right. What's next?

6 MS. CASKEY: Thank you, Your Honor.

7 MR. DAVIS: Thank you, Your Honor.

8 THE COURT: Y'all have -- enjoy your lunch.

9 (At 11:16 a.m., the above hearing concluded.)

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1 CERTIFICATE OF TRANSCRIBER

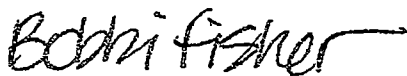
2 CASE NAME/NUMBER: J. Doe v. James Y. Becker

3 2019-CP-10-06590

4 DATE OF HEARING: 4/19/2022

5 COURT REPORTER/MONITOR: DCRP/Caressa Johnson

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
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10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.
14

15 17
18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: June 1, 2022

20
21
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THE STATE OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price

Case No. 2019-CP-10-6590

J. Doe,

Appellant,

v.

James Y. Becker, individually,
M. M. Caskey, individually, and
Haynsworth Sinkler Boyd, P.A.,
Mikell R. Scarborough,
in official capacity and, as
indicated, individually
re unofficial acts, and
Charleston County,

Respondents.

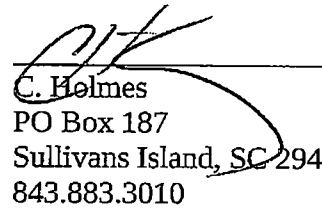
PROOF OF SERVICE

I hereby certify that a copy of the above document was served upon the attorney of record for the respondents by regular first class mail postage pre-paid on this date at this address:

MM Caskey
1201 Main St. #2200
Columbia, SC 29201

Drew Lindemann
5 Calendar Ct., Ste. 202
Columbia, SC 29206

Dated 11.13.24


C. Holmes
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Sullivans Island, SC 29482
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