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SC Court of Appeals

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

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 hamstrings 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 wihout 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 permissory 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 wihout 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 againsts "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(*SCCPC/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 (6thCir. 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, SCRCP, 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 dismissa 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 unreluctant 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 Bencher, 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 wihout factual support or jointly-filed ROA should be vacated and deferred until final briefs and the ROA are filed.

Respectfully submitted,

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Thank You!