RECEIVED
Jun 25 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Circuit Court Judge of the 9th Judicial Circuit

---

App. Case No. 2023-000296

J. Doe,

Appellant,

v.

Design Review Board (DRB)
and the
Town of Sullivans Island (SI),

Respondents.

MOTION TO REINSTATE ADDRESSED TO THE CHIEF JUDGE, MOTION TO STRIKE AND MOTION FOR ABEYANCE PENDING RESOLUTION, IF DENIED, MOTION FOR RULE 240(j), SCACR, *DE NOVO* PANEL APPEAL, AND MOTION FOR ABEYANCE PENDING RESOLUTION, AND IF DENIED, MOTION FOR REMAND, AND MOTION FOR ABEYANCE PENDING RESOLUTION

Pursuant to Rule 260(a), 207, 208, 209, 210, and 262, SCRCP, appellant respectfully submits motion to reinstate for good cause shown. As a threshold matter, the clerk previously wrongfully dismissed based on error of material fact and false claim that appellant's brief as well as designation of matter is untimely. The record reflects appellant's brief as well as designation of matter is timely filed and served within 30 days of receiving the court reporter's response to timely request for transcript. The error was respectfully brought to the attention of the clerk. Despite timely notice, the error went uncorrected. Similarly, the June 11, 2025, filing is again reversible based on error of material fact. The clerk's dismissal dated June 11, 2025, includes a copy of correspondence dated May 21, 2025, which we did not receive. The clerk's dismissal is reversible as a matter of law because it cites and relies on correspondence dated May 21, 2025, which was not received by the appellant. See supporting affidavit attached. As set forth more fully below, motion for remand with abeyance is based on the other side's introduction of unilateral, after-created unreliable hearsay not presented in the proceeding below. Significantly and materially, Rule 210(c), SCACR, provides, "The record **SHALL** not include matter which was not presented to the lower court." Rule 210(c), SCACR (emphasis supplied). Counsel Walker knew or should have known introducing unilateral, after created evidence not presented in the proceeding below is prohibited, not to mention, fundamentally unfair. Moreover, the record reflects Counsel Walker has unclean hands in introducing unilateral, after created unreliable hearsay not presented below and presented well after briefs have been filed in violation of Rule 210(c), SCACR, seeking dismissal. Rule 210(c), SCACR, and the SCACR generally. Accordingly, the undersigned requests the currently pending motion for remand with abeyance be granted and/or the pending motion to strike unilateral, after created evidence not presented below be granted.

The following statutes and South Carolina Constitutional protections, privileges, and immunities are pertinent:

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 for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.)

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.)

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.

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 for disposition of appeals*. The concurrence of two or more of the judges is necessary to decide appeals. S.C. Code § 14-8-80 (emphasis supplied).

It is respectfully submitted denial of motion to strike after acquired unreliable hearsay never presented below, presented outside the record, and presented after briefs are filed cannot pass State or Federal Constitutional muster. But for denial of equal protection, denial of meaningful opportunity to be heard, and/or denial of meaningful record for meaningful review, the outcome should and would be in the undersigned's favor. The rule of lenity supports the intended beneficiary, the adversely affected party including the undersigned.

DISCUSSION

I. Motion to Strike

"Thus, if the opposing party includes matter not presented below, it would be appropriate to make a **motion to strike that matter**...as the accompanying brief may have to be revised." Toal *et al.*, *Appellate Practice in South Carolina* (S.C. Bar 2002, 2nd ed.), p. 261 (emphasis supplied). Binding Supreme Court precedent provides, "Nothing in the appellate court rules permits a party to unilaterally add after-created evidence." *Wmsbg. Rural Water & Sewer Co., Inc., v. Wmsbg. Cty. Water & Sewer Authority*, 367 S.C. 566, 627 S.E.2d 690 (2006). Without being disagreeable, the undersigned respectfully submits motion with abeyance addressed to the Chief Judge to strike the other side's introduction of unilateral, after-created unreliable hearsay not based on personal knowledge and not presented in the proceeding below and, if denied, motion for Rule 240(j), SCACR, *de novo* panel appeal with abeyance and, if denied, motion for remand with abeyance. This matter involves one of the most desirable locations of residential property in this great State, if not on the East Coast. Significantly and materially, Rule 210(c), SCACR, provides, "The record SHALL not include matter which was not presented to the lower court." Rule 210(c), SCACR (emphasis supplied). To the extent there is ambiguity, the rule of lenity supports the intended beneficiaries, the citizens of this great State, including the undersigned, and the Constitutionally protected right to defend one's modest home. The clerk's procedural default finally determines the matter by granting defendant's motion to dismiss as a result of Counsel Walker's unprofessional and fundamentally unfair conduct and if appellant's motion to strike is denied, appellant respectfully enters motion for Rule 240(j), SCACR, de novo panel appeal with abeyance, and if denied, motion for remand in order to present out-of-time, after acquired, unilaterally created unreliable hearsay below, for meaningful opportunity to propound discovery, for meaningful opportunity to respond, and to provide meaningful record for meaningful review on appeal. The after acquired, unreliable hearsay, so-called evidence, is introduced LONG AFTER the Initial Briefs are filed. Once again, defendants have unclean hands. Procedural due process and substantive

due process require opportunity to respond. The out-of-time, unilateral, after-created, unreliable hearsay, not timely presented before briefing herein is waived as untimely. If not stricken, appellant respectfully submits motion for remand. Accordingly, the appellant respectfully enters motion addressed to the Chief Judge with abeyance including motion to strike out-of-time, after-acquired, unilaterally created unreliable hearsay not presented below. "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, 9, 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. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

The SCACR prohibit after acquired evidence never presented below. "The record SHALL NOT include matter which was not presented to the lower court." Rule 210(c), SCACR (emphasis supplied). The adversely affected party has had no meaningful opportunity to respond to the misrepresentations, material omissions, and frank falsehoods impermissibly introduced. If motion to strike unilaterally after created evidence is denied, motion for remand is respectfully requested for presentation of after-acquired unreliable hearsay to the lower court to obtain a ruling below, for meaningful opportunity to propound discovery, to present evidence in response below, and to obtain adequate record below for meaningful review.

Material to review, after failing to timely file his initial brief without timely requesting an extension, defendant lacks diligence and files his out-of-time brief months after the allowed amount of time under Rule 208, SCACR. The appellant respectfully submits motion to strike the other side's

unreliable hearsay which is in violation of the SCACR long after the briefs are due based on defendant's unprofessional introduction of unilaterally after created unreliable hearsay not presented below. Rules 209(c) and 210(c), SCACR, and generally. Further, "there is no limit to the type of motion that could be filed in the appellate courts." Toal *et al., Appellate Practice in South Carolina* (3rd ed. 2016) p. 379. None of the unilateral after acquired fabricated evidence which is not presented to the lower court is proper. Rules 209(c) and 210(c), SCACR, and generally. Defendants should and would object to introduction of unilateral, after-created, out-of-time evidence outside the record to finally decide the appeal in order to deny the other side any meaningful opportunity to respond. Pursuant to S.C. Const. art. V, § 16 (*supra*), S.C. Code § 14-8-80 (*supra*), and generally, if the motion to strike is denied, the appellant respectfully motions for Rule 240(j), SCACR, *de novo* appeal panel hearing with disposition by a quorum of the appeal panel of State Constitutional Judicial Officers nominated, vetted, and voted for interpretation of the law. As a threshold matter, Counsel Walker fundamentally misconstrues the function of the appellate courts by requesting an evidentiary ruling with introduction of unilaterally after created unreliable hearsay not based on personal knowledge and not presented below, including evidence outside the scope of appeal, evidence outside the record, evidence which is misrepresented and disputed, and evidence which is insufficient to prove the truth of the matter asserted. *See Norris v. Ferre*, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993)(evidence not presented to the lower court is not proper on appeal). *See Wmsbg. Rural Water & Sewer Co., Inc., v. Wmsbg. Cty. Water & Sewer Authority*, 367 S.C. 566, 627 S.E.2d 690 (2006) ("Nothing in the appellate court rules permits a party to unilaterally add after-created evidence."); Toal *et al., Appellate Practice in South Carolina* (3rd ed. 2016), p. 418.

The undersigned timely submits motion to strike the other side's unilateral after created unreliable hearsay with no personal knowledge which is disputed, which is outside the record, which is incomplete, which impermissibly denies substantial rights including procedural and substantive due process, and which, even if true, though denied, is insufficient to prove the truth of the matter asserted.

Counsel Walker assesses he has no meritorious defense and is desperate to evade the merits of the timely filed brief. Accordingly, defendant's unilateral after created so-called evidence consisting of unreliable hearsay with no personal knowledge should be stricken or denied.

Moreover, Mr. Walker overlooks, misapprehends, and/or fails to address the fact that the appeal requests interpretation of the law including but not limited to, S.C. Code § 5-31-450:

SECTION 5-31-450. Drains for surface water.

Whenever, within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare along such thoroughfare rather than over private lands adjacent to or adjoining such thoroughfare, such municipality shall, upon demand from the owner of such private lands, provide sufficient drainage for such water through open or covered drains, except when the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property. But if such drains cannot be had along or under such streets, alleys or other thoroughfare, the municipal authorities may obtain, under proper proceedings for condemnation on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage. If any municipal corporation in this State shall fail or refuse to carry out the provisions of this section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.

HISTORY: 1962 Code Section 59-224; 1952 Code Section 59-224; 1942 Code Section 7301; 1932 Code Section 7301; Civ. C. '22 Section 4449; Civ. C. '12 Section 3026; 1902 (23) 1038; 1953 (48) 272.

Accordingly, the Legislature intended to and did enact legislation including S.C. Code § 5-31-450 which is not moot. The unreliable hearsay should be stricken. See supporting affidavit and previously filed affidavits which are incorporated in full by reference. If denied, remand for a ruling below, to propound discovery, and to provide full and fair record for meaningful review is respectfully requested. Moreover, remand should and would further resolution by allowing defendant to motion for inclusion of certain parties defendant wants to bring in.

II. Jurisdiction can be raised at any time.

Each assertion in this document that is not inconsistent is incorporated in full by reference herein as if repeated verbatim. Jurisdiction can be raised at any time and jurisdiction cannot be waived. *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994). Counsel Walker has failed four basic requirements of appeal by introducing unilateral, after created unreliable hearsay not presented below, not ruled upon below, not timely presented before Initial Briefs are filed, and lacking sufficient specificity while requiring revision of Briefs:

1) Counsel Walker did not obtain a ruling below on the offending unilateral unreliable hearsay. The undersigned's motion to strike is based on rules designed to give the court below a fair opportunity to rule on the issues and thus provide adequate explanation for meaningful review by the appellate court. *Herron v. Century BMW*, 409 S.C. 563, 762 S.E.2d 693 (2012).

2) Counsel Walker admits he did not present the offending unilateral unreliable hearsay below.

3) The record reflects the offending unilateral unreliable hearsay is not timely presented, is out-of-time and/or waived, and is presented after Briefs are filed.

4) Counsel Walker's offending unilateral unreliable hearsay is insufficiently specific to prove the truth of the matter asserted including but not limited to, failure to sufficiently, if at all, address S.C. Code § 5-31-450.

Accordingly, the four basic requirements have not been met, the unilateral, after created unreliable hearsay is waived and/or motion to strike unilateral, after created unreliable hearsay not presented below is respectfully submitted.

III. Threshold matter.

Each assertion in this document that is not inconsistent is incorporated in full by reference herein as if repeated verbatim. As a threshold matter, the June 11, 2025, order is in violation of Rule 266, SCACR, SUBSEQUENT APPLICATIONS. The record reflects Counsel Walker submits successive motions to dismiss based on error of material fact and/or impermissible unilateral after created unreliable hearsay with no personal knowledge outside the record. Case law provides that

Subsequent Applications constitute an unauthorized request for an unauthorized revision or modification to "change, alter or reverse a decision of an *appellate judge*." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis supplied). By analogy, Rule 43(l), SCRCP, provides, "If any motion be made to any *appellate* judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action…This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st rule of the Circuit Courts, which declares that 'if any application for an order be made to any judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it shall be revoked'...(A) judgment of the *Court of Appeals*... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one *appellate* judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. *Appellate judges* upon the same state of facts, have no power to change, alter or reverse a decision of a brother judge of the same *appellate court*." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis supplied); *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). *See Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). "It was in substance really, an appeal from the judgment of one *appellate judge* to that of another *appellate judge*." *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947)(emphasis supplied). It is apparent that an order by another judge, bearing *a later date*, is in conflict with the previous ruling of *Chief Judge Bruce Williams*, which order "will have to be reversed since one *appellate judge* has no power to review, revise or reverse the action of another *appellate judge*." *Steele v. Charlotte C. & A. R. Co.*, 14 S.C. 324 (S.C. 1880) (emphasis supplied); *Warren, Wallace & Co. v. Simon*, 16 S.C. 362;

Charles v. Jacobs, 18 S.C. 598; *State v. Price*, 35 S.C. 273, 14 S.E. 490.

The law of this appeal is Chief Judge Bruce Williams' prior denials of unprofessional Counsel Walker's successive motions to dismiss herein. In *Wetzel v. Woodside Dev. Ltd. P'ship.*, 364 S.C. 589, 615 S.E.2d 437 (2005), the non-moving party was not properly served and the *June 11, 2025, order* has the effect of granting *untrustworthy Counsel Walker's motion to dismiss the appeal without disposition on the pending motion to remand* (emphasis supplied). *Id.* The undersigned's motion to strike is based on rules designed to give the court below a fair opportunity to rule on the issues and thus provide adequate explanation for meaningful review by the appellate court. *Herron v. Century BMW*, 409 S.C. 563, 762 S.E.2d 693 (2012). Accordingly, if motion to strike is denied, remand is hereby respectfully requested to give the court below a fair opportunity to rule on the issues and thus provide adequate explanation for meaningful review by the appellate court.

IV. Neither S.C. Code § 14-8-80 (*supra*) nor Rule 240(j), SCACR, (*infra*), provides authority for a single individual to dismiss or finally decide a party's appeal which requires a COA appeal panel of three judges with the concurrence of two or more. S.C. Code § 14-8-80.

Each assertion in this document that is not inconsistent is incorporated in full by reference herein as if repeated verbatim. Pursuant to S.C. Code § 14-8-80, three COA judges constitute a quorum and a quorum is required for disposition with the effect of dismissing or finally deciding a party's appeal. The concurrence of two or more members of the quorum is required to dismiss or finally decide a party's appeal. S.C. Code § 14-8-80. By definition, a single individual's order is not a hearing. The State Constitution and statutory authority require a hearing and ruling by a quorum of three with concurrence of two or more issued after de novo appeal panel hearing. Binding precedent in the *McMillan* case requires reversal of a COA decision effectively finally deciding or dismissing with less than three panel judges. S.C. Code § 14-8-80; S.C. Code § 14-8-220; *State v. McMillan*, 349 S.C. 17,

561 S.E.2d 602 (2002) (the Supreme Court reversed the decision of the Court of Appeals which was heard with only two of the three panel judges present).

In S.C. Code §§ 14-8-290 and 14-8-220, the powers of individual judges are specified. Significantly and materially, those statutes do not authorize a single individual to dismiss; even assuming, though denying, a single individual is so authorized, S.C. Code § 14-8-220 provides that the timely request herein for de novo panel appeal SHALL be allowed. S.C. Code § 14-8-220. It is respectfully submitted under these facts, the SCACR require concurrence of two or more members after de novo appeal panel hearing for dismissing or finally deciding a party's appeal. Accordingly, the dismissal by a single individual is reversible as a matter of law in violation of S.C. Code § 14-8-80, S.C. Code § 14-8-220, and/or the SCACR generally.

Notably, pursuant to S.C. Code § 14-8-220, *supra*, Rule 240(j), SCACR (*infra*), specifies authority of an individual COA judge. **Rule 240(j) Authority of an Individual Judge** is expressly limited to "motion or petition," which requires due process including notice and meaningful opportunity to be heard by the adversely affected party on the "motion or petition" at a meaningful time. Specifically, the plain language of Rule 240(j), SCACR, *infra*, does not provide an individual judge authority in the absence of a "motion or petition," it requires due process, it provides no sua sponte authority, and it provides no authority to dismiss or finally decide an appeal which requires a quorum with the concurrence of two or more members. S.C. Code § 14-8-80. Significantly and materially, **Rule 240(j) Authority of an Individual Judge** does not provide a single individual authority to dismiss or finally decide an appeal because the plain language excludes it. Rule 240(j), SCACR, provides as follows:

Rule 240(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court *which is required for dismissal or finally deciding an appeal as in this case pursuant to S.C. Code § 14-8-80,* an individual judge or justice may grant or deny any motion or petition on behalf of the court. Rule 240(j), SCACR (emphasis supplied).

Under the facts, it is respectfully submitted Rule 240(j) excludes authority to an individual judge "where these rules (*including pursuant to S.C. Code § 14-8-80*) require the concurrence of two or more members" to finally decide or dismiss a party's appeal. Rule 240(j), SCACR (emphasis supplied). That is to say, because S.C. Code § 14-8-80 requires a quorum with concurrence of two or more members to finally decide or dismiss a party's appeal, Rule 240(j) expressly excludes authority to an individual to finally decide or dismiss an appeal. Further, Rule 240(j), *supra*, requires "motion or petition" with notice and meaningful opportunity to be heard which by inference excludes sua sponte authority of an individual judge. Moreover, S.C. Code § 14-8-220 expressly provides an appeal panel hearing "SHALL be allowed from decision of any one judge to a panel of the Court." S.C. Code § 14-8-220 (emphasis supplied). The statutory scheme as a whole requires the concurrence of two or more members at de novo appeal panel hearing to finally decide or dismiss an appeal. Rule 240(j), SCACR. Accordingly, dismissal by a single individual is reversible as a matter of law in violation of S.C. Code § 14-8-220, S.C. Code § 14-8-80, Rule 240(j), SCACR, and the SCACR generally.

Even assuming, though denying, a single individual is so authorized, S.C. Code § 14-8-220 provides de novo appeal panel SHALL be allowed as follows:

SECTION 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.** S.C. Code § 14-8-220 (emphasis supplied).

The record reflects the undersigned's timely request for de novo appeal panel pursuant to S.C. Code § 14-8-220. Accordingly, dismissal by a single individual is reversible as a matter of law in violation of S.C. Code § 14-8-80, S.C. Code § 14-8-220, and the SCACR generally.

In sum, under the facts, a single individual issuing an order is, by definition, not a hearing and is inconsistent with the requirement of an appeal panel with a quorum of three and concurrence of two of the three to finally decide or dismiss appeal. S.C. Code § 14-8-80. Further, in the *Navistar* case, the Fourth Circuit ruled that a 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). Accordingly, reinstatement is respectfully requested. "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).

V. Under the facts, the South Carolina Constitution and statutory authority provide litigants a right to South Carolina Constitutional Judicial Officers.

Each assertion in this document that is not inconsistent is incorporated in full by reference herein as if repeated verbatim. The record reflects Chief Judge Bruce Williams' denied Counsel Walker's successive motions to dismiss. In *Wetzel v. Woodside Dev. Ltd. P'ship.*, 364 S.C. 589, 615 S.E.2d 437 (2005), the non-moving party was not properly served and the *June 11, 2025, order* has the effect of granting *untrustworthy Counsel Walker's* motion to dismiss the appeal without disposition on the pending motion to remand (emphasis supplied). *Id.* The South Carolina Constitution and statutory authority provide litigants a right to a South Carolina Constitutional Judicial Officer with constitutional

protections ministerial staff lack. Article V, § 16 of the South Carolina Constitution (*supra*) provides that Circuit Court Judges and the Judges of the Court of Appeals (COA) shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. By analogy, the U.S. Constitution provides similar protections for Article III Judicial Officers:

> These protections are designed to ensure the independence and impartiality of the judicial officers authorized to decide the merits of a litigant's case. The Supreme Court has held that litigants in federal court have a personal right, conferred by Article III, to insist upon adjudication of their claims by a judge who enjoys the salary and tenure *protections afforded by Article III. Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986) ; *see Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.* , 725 F.2d 537, 542 (9th Cir. 1984) (en banc). *Roell v. Withrow*, 538 U.S. 580, 590, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003)....

Koby v. ARS Nat'l Servs., Inc., 846 F.3d 1071, 1078 (9th Cir. 2017) (emphasis supplied).

The protections found in Article V, §§ 13 and 16 of the South Carolina Constitution apply to South Carolina Constitutional Judicial Officers who are nominated, vetted, and voted by the Legislature to interpret the law and decide appeals. These protections are lacking for ministerial staff who are not nominated, vetted, and voted by the Legislature to interpret the law or finally decide appeals. Matters of great public importance have been overlooked or misapprehended. Accordingly, reinstatement is respectfully requested.

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

Each assertion in this document that is not inconsistent is incorporated in full by reference herein as if repeated verbatim. As set forth more fully herein, uniformity in the appellate court and consistency of interpretation of the SCACR is respectfully requested. Ambiguity in the appellate court regarding Rule 240(j) standard of review is prejudicial denial of due process. Pursuant to S.C. Code § 14-8-220, it is respectfully submitted application of the de novo standard of review at appeal panel hearing for review of a single individual's decision is mandated. S.C. Code § 14-8-220. "Thus, if the opposing party includes matter not presented below, it would be appropriate to make a **motion to**

strike that matter...as the accompanying brief may have to be revised." Toal *et al.*, *Appellate Practice in South Carolina* (S.C. Bar 2002, 2nd ed.), p. 261 (emphasis supplied). The record reflects the clerk of the appellate court misconstrued appellant's filing resulting in granting the other side's motion to dismiss. Binding Supreme Court precedent provides, "Nothing in the appellate court rules permits a party to unilaterally add after created evidence." *Wmsbg. Rural Water & Sewer Co., Inc., v. Wmsbg. Cty. Water & Sewer Authority*, 367 S.C. 566, 627 S.E.2d 690 (2006). The meritorious motion regarding striking unilateral, after created evidence not presented below is currently pending. Moreover, the South Carolina Constitution Art. V, § 9 (*supra*), is mandatory and prohibitory and binding precedent from the *Miller* case provides as follows:

> The Clerk of Court's duty is not discretionary. **The Clerk of Court should not construe** a *filing*.... it is **not within the Clerk of Court's authority** to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely. 21 C.J.S. Courts § 338 (2006) ("[A] clerk of court cannot ordinarily determine questions of law [or] render judgments."). *Miller v. State*, 659 S.E.2d 492, 377 S.C. 99 (S.C. 2008) (emphasis supplied).

Pursuant to Article V, § 16 (*supra*), the South Carolina Constitution provides that the Judges of the Court of Appeals (COA) shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. By analogy, the U.S. Constitution provides similar protections for Article III Judicial Officers:

> These protections are designed to ensure the independence and impartiality of the judicial officers authorized to decide the merits of a litigant's case. The Supreme Court has held that litigants in federal court have a personal right, conferred by Article III, to insist upon adjudication of their claims by a judge who enjoys the salary and tenure *protections afforded by Article III. Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986) ; *see Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.* , 725 F.2d 537, 542 (9th Cir. 1984) (en banc). *Roell v. Withrow*, 538 U.S. 580, 590, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003)....
> *Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071, 1078 (9th Cir. 2017) (emphasis supplied).

The protections found in Article V, §§ 13 and 16 of the South Carolina Constitution apply to South Carolina Constitutional Judicial Officers who are nominated, vetted, and voted by the Legislature to interpret the law and decide appeals. Ministerial clerks lack these protections as they are not

nominated, vetted, and voted by the Legislature to interpret the law.

To the extent a ministerial clerk attempts to "construe" a litigant's filing and impermissibly interpret the law, the South Carolina Constitution and statutory authority provide for de novo interpretation of the law by State Constitutional Judicial Officers. The undersigned respectfully submits motion to strike out-of-time, after-acquired evidence not based on personal knowledge, not contained in the record, never presented below, and presented herein long after briefing. *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939) (requiring the question for appellate review to be first fairly and properly raised below and passed upon below). Accordingly, based on binding precedent, it is respectfully requested that the motion to strike be granted.

If motion to strike is denied, the appellant requests S.C. Code § 14-8-220, *supra*, de novo appeal panel hearing. Under the facts, the requested S.C. Code § 14-8-220 appeal panel "shall be allowed" and requires de novo standard of review at COA appeal panel hearing. S.C. Code § 14-8-220. Under the facts, the pattern and practice of failing to provide S.C. Code § 14-8-220 appeal panel hearing with de novo review of decisions by a single individual impermissibly renders duly enacted Legislative statutory authority superfluous in S.C. Code § 14-8-220. S.C. Code § 14-8-220. Under the facts, if S.C. Code § 14-8-220 appeal panel hearing with de novo standard of review of an individual's dismissal is not allowed, there is no factual setting where it could or would apply. A petition for rehearing of an individual judge's order is internally inconsistent because an individual judge's order is, by definition, not a hearing, therefore, there is no hearing to "re-hear" as a condition precedent. Accordingly, under the facts, the appellant respectfully requests S.C. Code § 14-8-220 appeal panel hearing which requires non-participation by the individual who signed the order that is the subject of the S.C. Code § 14-8-220 appeal. *See State v. McMillan*, 349 S.C. 17, 561 S.E.2d 602 (2002) (the Supreme Court reversed the decision of the Court of Appeals which was heard with only two of the three panel judges present).

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.

S.C. Code § 14-8-220

SECTION 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.** S.C. Code § 14-8-220 (emphasis supplied).

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Significantly and materially, the Legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220. It is respectfully submitted that the Rule 240(j) rewording of "petition for rehearing" without statutory change in S.C. Code § 14-8-220 is internally inconsistent and imprecise: Specifically, a petition for rehearing of a decision by an individual judge is internally inconsistent because a decision by an individual judge is, by definition, not a hearing, because there is no hearing to "rehear" as a condition precedent, and because the standard of review for S.C. Code § 14-8-220 (and Rule 240(j)) appeal is different than for Rule 221, SCACR, petition for rehearing. Moreover, conflating S.C. Code § 14-8-220 (and Rule 240(j)) petition for rehearing and Rule 221, SCACR, petition for rehearing has led to confusion and/or ambiguity regarding the standard of appellate review. To the extent there is ambiguity, the rule of lenity supports the undersigned's position. S.C. Code § 14-8-220 provides protection for the public, for individual judges, and for the courts. Accordingly,

pursuant to S.C. Code § 14-8-220, the proper standard of review is *de novo* panel appeal which is hereby requested. See *Skinner v. Westinghouse Elec. Corp.*, 394 S.C. 428, 432–33, 716 S.E.2d 443, 445 (2011) (holding that a specific statute governing a certain issue controls over the more general language of another statute addressing the issue); *Avant v. Willowglen Academy*, 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (noting "the principle that more specific rules prevail over general ones").

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re *Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted). *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805 (1970).

This Honorable Court should not completely disregard the text of an unambiguous statute based on an alleged conflict. In the instant case, the ordinary meaning of S.C. Code § 14-8-220 will not lead to absurd results unintended by the Legislature, so the plain language of the statute is given effect. *Hodges v. Rainey*, 533 S.E.2d 578, 341 S.C. 79 (S.C., 2000).

"In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to

have some efficacy, or the legislature would not have enacted it into law." (citation omitted). *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Accordingly, ambiguity and/or failure to apply the de novo standard of review for a single individual's decision is reversible as a matter of law and cannot pass Constitutional muster.

In addition, pursuant to S.C. Code § 14-8-220, it is respectfully submitted Rule 240(j), SCACR, appeal requires *de novo* review at appeal panel hearing which does not include participation, influence, or direct or indirect contact by the individual judge who signed the order which is the subject of the Rule 240(j), SCACR, appeal. The record reflects the undersigned filed for Rule 240(j), SCACR, appeal panel hearing of a single individual's decision, as opposed to a Rule 221, SCACR, petition for rehearing. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the decision of a single individual. S.C. Code § 14-8-220. Meaningful review requires that a judge not 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 while in the court below. 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 while in the court below. In these cases, the Judge or Justice will recuse him or herself from reviewing his or her own order. 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). In that 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. 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. [*Ríce v. McKenzíe,* 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 appeal panel for review of his or her own decision. *Ríce v. McKenzíe*, 581 F.2d 1114, 1117 (4th Cir. 1978) (emphasis supplied). In consideration of legislative intent, spirit, and letter of S.C. Code § 14-8-220 and the overarching principles incorporated in the State Constitution by its framers, due process requires the individual who individually signed the order not participate, directly or indirectly, on appeal of his or her decision which is the subject of the Rule 240(j), SCACR, appeal. "De novo literally means 'anew.' *See Black's law Dictionary* 368 (8th ed. 2005)." Toal *et al., Appellate Practice in South Carolina 224 (*3rd ed. 2016). Accordingly, S.C. Code § 14-8-220, the plain language of that statute, and the mandates of due process require non-participation by the individual who signed the decision which is the subject of the Rule 240(j), SCACR, de novo appeal panel hearing.

Like the Federal Rules, the standard of review for Rule 240(j), SCACR, appeal panel hearing of an order by an individual judge is *de novo.* S.C. Code § 14-8-220. 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 Local Rule 27(e), 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). Significantly and materially in that case, the denial of a transfer motion does not end or finally determine a case; the necessary element under Rule 240(j), SCACR, appeal is that the order is signed by a single individual. Accordingly, the standard of review under these circumstances for Rule 240(j), SCACR, appeal panel is *de novo.*

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests this Court grant the motions with abeyance pending resolution. The State Constitution and statutory authorization require disposition of appeals and interpretation of law by a quorum of State Constitutional Judicial Officers on the appeal panel with concurrence of two or more regarding dispositive motions as well as Counsel Walker's successive motions herein to dismiss. Counsel Walker has unclean hands including unprofessionally introducing unilateral, after created unreliable hearsay not based on personal knowledge, not ruled upon below, not presented below, not timely presented before briefing herein, and/or waived as untimely which he knew or should have known was prohibited by the SCACR. Rule 210, SCACR. The undersigned requests defendant's unilateral after created evidence be stricken with abeyance. If denied, due process requires that defendant present the unilateral after created unreliable hearsay to the lower court on remand for a ruling, opportunity to confront the unauthorized deponent who has no personal knowledge, meaningful opportunity to respond, and adequate record for meaningful review which is hereby requested.

Dated 6/25/25

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010
Appellant

App. Case No. 2023-000296

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 appellant, of legal age, and competent to state the matters herein.

2. This affidavit is submitted in support of the attached in App. Case No. 2023-000296.

3. Pursuant to Rule 260(a), SCRCP, appellant respectfully submits motion to reinstate for good cause shown. The record reflects the order filed June 11, 2025, recites and relies on correspondence dated May 21, 2025, which we did not receive. Specifically, the undersigned makes motion to dismiss the order filed June 11, 2025, in violation of the SCACR. See Rules 210, 207, 208, 209, and 262, SCACR; *see also Wetzel v. Woodside Dev. Ltd. P'ship.*, 364 S.C. 589, 615 S.E.2d 437 (2005) (the non-moving party was not properly served and the *June 11, 2025, order* has the effect of granting *untrustworthy Counsel Walker's* motion to dismiss the appeal which is immediately appealable and which authorizes motion for reconsideration and/or remand regarding action of the *clerk/court by a single individual* with the effect of dismissing or finally deciding the adversely affected party's appeal) (emphasis supplied).

4. Accordingly, the order filed June 11, 2025, is reversible as a matter of law, inadvertent error or omission, and/or insufficient notice of correspondence dated May 21, 2025, which we did not receive.

FURTHER THE AFFIANT SAITH NOT.

Subscribed and sworn to before me,
Notary Public, this 20th day
of June, 2025.

(Signed and Sealed)

NOTARY PUBLIC
My commission expires: 12/6/2033

ANDRIEA ROBINSON
My Commission Expires
NOTARY PUBLIC
12-06-2033
STATE OF SOUTH CAROLINA

RECEIVED
Jun 25 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Circuit Court Judge of the 9th Judicial Circuit

---

App. Case No. 2023-000296

J. Doe,

Appellant,

v.

Design Review Board (DRB)
and the
Town of Sullivans Island (SI),

Respondents.

PROOF OF SERVICE

I certify that a true copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address: GT Walker, 66 Hasell St., Chas., SC 29401.

Dated 6/25/25

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

Hard copy available on request -

Thanks!

Fax Cover:

C. Holmes
P O Box 187
Sullivans Island, SC 29482-0187
843.883.3010