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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ORIGINAL JURISDICTION

Hampton County Court of Common Pleas
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2026-000713
Circuit Court Case No. 2021-CP-25-00392

Renee S. Beach, Phillip Beach, Robin Beach,
Savannah Tuten, and Seth Tuten, Respondents,

v.

Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation,
Blake Greco and Jason D'Cruz, Vicky Ward, Max Fratoddi,
Henry Rosado, and Private Investigation Services Group, LLC, Defendants,

Ex Parte:
Gregg Roman and Gravitas Solutions, LLC Petitioners,

v.

PNC Financial Services Group, Inc. d/b/a PNC Bank, Renee S. Beach,
Savannah Tuten, and Seth Tuten Respondent.

BRIEF OF RESPONDENTS

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COUNTER-STATEMENT OF ISSUES BEFORE THE COURT¹

- I. Should this Court Dismiss this Petition as Improvidently Granted?
- II. Does South Carolina Code Ann. § 19-11-100 (2014) apply to the information Respondents seek from Petitioners?
- III. Did Petitioners Have Actual and Sufficient Notice that the Circuit Court Intended to Rule Upon Petitioners' Motion to Quash at the Hearing?
- IV. Does the First Amendment "Reporter's Privilege" Apply to the Information Respondents Seek from Petitioners?
- V. Did the Circuit Court treat Petitioners in Some Disparate Manner so as to engage in arbitrary decision-making?
- VI. Did the Circuit Court Abuse its Discretion in Finding the Subpoena not overly broad or unduly burdensome to Petitioners?
- VII. Do Respondents' Positions Before this Court have merit?
- VIII. Is there a "pattern of shield law violations" mandating a definitive ruling from this Court?

¹ Petitioners listed only two "Issues on Appeal," but broke their arguments into seven (7) separate parts.

COUNTER-STATEMENT OF THE CASE

Respondents do not take issue with Petitioners' statement of the case with the exception of the claim of a lack of notice of the November 26, 2025, hearing. Petitioners' counsel was copied on all scheduling emails to and from Judge Kelly or his law clerk, including an email of November 18, 2025, from the Parker Defendants' counsel James Bannister requesting "time for pending motions," reminding the court of a pending discovery deadline and requesting the court address "all motions pending." (Petition, Exh. A). Both Judge Kelly and his law clerk commented on their inability to reach Petitioners' counsel to find out why he was not present.

STANDARD OF REVIEW

The denial of a motion to quash a subpoena is a procedural ruling which an appellate court reviews under the abuse of discretion standard. *Taylor v. Taylor*, 434 S.C. 307, 863 S.E.2d 335 (Ct. App. 2021), citing *Stoney v. Stoney*, 422 S.C. 593, 594 n. 2, 813 S.E.2d 486, 486 n. 2 (2018).² “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *Aleksey v. State*, Op. No. 28333 (S.C. Sup. Ct. filed May 20, 2026) (Howard Adv. Sh. No. 19 at 11, 18).

Petitioners argue “[w]here there are no specific findings of fact, this Court may make its own findings from the record.” (Brief of Petitioner, p. 14).³ In fact, although this Court in its original jurisdiction has the authority to find its own facts, the Court rarely does so and instead generally uses a referee when fact finding is necessary. *See Pascoe v. Wilson*, 416 S.C. 628, 649 n. 21, 788 S.E.2d 686, 697 n. 21 (2016) (Few, J, dissenting opinion). As Justice Few noted in his dissent:

We have the authority to find facts in our original jurisdiction. *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 497, 685 S.E.2d 600, 607, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009). However, we have hardly ever done so. In *Sanford*, the only case I have been able to find in which we made factual findings in our original jurisdiction, we examined the file from a State Ethics Commission investigation to determine whether a letter written by the Governor “constitute[d] a complete waiver of confidentiality” in the investigation.

² Petitioners cite *Hamm v. S.C. Pub. Serv. Comm’n*, 321 S.C. 238, 439 S.E.2d 852 (1994) for this proposition. *Hamm* involved the denial of a motion to compel discovery responses and the denial of a motion for a continuance. There was no discussion of a subpoena, much less a motion to quash, in the opinion.

³ Petitioners cite “*Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 567, 743 S.E.2d 778 (2013),” but that principle appears nowhere in the opinion. The Court in *Shirley’s Iron Works* reviewed an appeal from the grant of summary judgment. The case does not stand for the proposition for which Petitioners cite it.

385 S.C. at 493, 685 S.E.2d at 605. *In all other cases*, we have used our original jurisdiction to resolve questions of law, and *when fact-finding is necessary to determine the law*, we have assigned the responsibility to find facts to a circuit court judge.

Pascoe v. Wilson, *supra* (emphasis added).

Rule 52, SCRCF, generally requires separate findings of fact and conclusions of law when the court rules without a jury, but that provision is merely directory and provides no basis for invalidating a judgment. *Borg Warner Acceptance Corp. v. Darby*, 296 S.C. 275, 279, 372 S.E.2d 99, 101-02 (Ct. App. 1988).

Finally, Petitioners contend “review of constitutional questions involving the First Amendment reporter’s privilege are subject to independent review.”⁴ The Court set forth the correct standard in *Gulfstream Café, Inc. v. Georgetown County*, 447 S.C. 1, 11, 923 S.E.2d 632, 637 (2025) (“The circuit court’s legal and constitutional conclusions are reviewed de novo.”).

⁴ Petitioners cite to *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485 (1984), but that case is not about a reporter’s privilege under the First Amendment or otherwise. Rather, the case involved a defamation claim against Consumer Reports for its review of loudspeakers. The Supreme Court stated: “Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of ‘actual malice’” under the test set forth *New York Times v. Sullivan* 376 U.S. 254 (1964). The case does not stand for the broad proposition Petitioners posit.

FACTS

The Plaintiffs brought this action in 2021 against the Parker Defendants, Blake Greco, Esq., Jason D’Cruz, Esq., and several others, including Max Fratodi, Henry Rosado and Private Investigation Services, Inc. (“the Investigators”).⁵ The allegations are that during a companion dram shop case against Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker’s Corporation (the “Parker Defendants”) involving the death of Mallory Beach (the “Boat Wreck” case), the Parker Defendants engaged consultants and investigators to attempt to affect the public narrative surrounding that case and to harass and discourage the Plaintiffs from continuing the litigation. This included the assertion that the South Carolina judiciary was corrupt and the Parker Defendants could not get a fair trial.

Petitioner Gregg Roman, who currently resides in Israel, makes over 300 annual media appearances on major television and radio networks as a purported security analyst. A representative of Defendant Parker confirmed with the Wall Street Journal that Mr. Roman did in fact work on behalf of Mr. Parker regarding the Boat Wreck case. Mr. Roman organized and funded a team to further help with his public relations and harassment campaign. He produced and narrated a documentary on the Discovery+ Channel, which included previously unreleased

⁵ This factual recitation is supported by independent production Respondents obtained as well as extensive discovery production in the underlying case among the parties, discovery in the Boat Wreck case, affidavits from nonparty witnesses, and deposition testimony by several witnesses, including the Investigators and Defendant Parker. Although Petitioners included a “Designation of Matter to be Included in the Record,” nothing in Rule 245 provides for such. Instead, the Court decides the matter based upon the briefs unless the Court provides “for discovery, fact finding and/or a briefing schedule as necessary.” Rule 245(c) (final sentence). Respondents will file an Appendix containing the material referenced in this Brief should the Court desire to review the extensive supporting materials.

material captured by an investigator working for the Parker Defendants.⁶ Further, Mr. Roman used Plaintiffs' confidential mediation video from the underlying "Boat Wreck" case and the never publicly released photographs of Mallory Beach's dead body.⁷

Despite the Parker Defendants withholding pertinent evidence of overseas wires, Plaintiffs learned that Defendant Parker engaged Demoman International Ltd. to aid the effort. Defendant Parker's representative admitted in the Wall Street Journal that Petitioner Gregg Roman worked on Defendant Parker's behalf.⁸ In fact, Petitioner contacted the Investigators on the same day that Defendant Parker initiated the first of three money wire transfers to Israel (June 1, 2020). In total, records obtained from Truist Bank reveal Defendant Parker personally wired \$383,000 to Israel for the benefit of Demoman International Ltd. over the next 30 days.

Mr. Roman hired and paid the Investigators through Gravitas Synergy Solutions, LLC, which is believed to be a shell company based in Sheridan, Wyoming. Gravitas maintains accounts with PNC Bank. The subject subpoena was issued by Plaintiffs' counsel to PNC Bank for records related to Gravitas Synergy Solutions, LLC and Gregg Roman to establish the

⁶ Mr. Roman is listed as an executive producer and made an appearance in the program.

⁷ The South Carolina Attorney General's office confirmed these photographs have never been released to the public. Warner Brothers has confirmed that Petitioner Roman is the source of these photographs. Connecting Mr. Roman to Mr. Parker is at the heart of this lawsuit.

⁸ See Bauerlein, Valerie, *A Convenience-Store Magnate, Teen Drinking and a Fatal Boat Crash: The Legal Case Shaking South Carolina*, Wall Street Journal Aug. 13, 2022. The article states that "a spokeswoman for Mr. Parker said an investigative firm digging into the Murdaughs on Mr. Parker's behalf hired investigative journalist Gregg Roman and two private investigators, Max Fratodi and Henry Rosado." The article notes "Mr. Roman said his written and documentary work were independent of the research he was paid to conduct." The article reports "[w]hen asked whether he conducted a stealth investigation and what specifically it entailed, Mr. Parker paused. 'Here's a better question,' he said. "'So what?'" Of course I did. Anybody in my situation would have done exactly the same thing."

payments from Parker through Demoman to Petitioners.

Respondents and Investigators have attempted to obtain Petitioner Roman's deposition regarding his involvement in the conspiracy but he has evaded all attempts to obtain his deposition. Although he claims to be a resident of Israel, Petitioner Roman is actually a resident of the Commonwealth of Pennsylvania.

Respondents' counsel served PNC Bank with the subject subpoena on May 2, 2025. Petitioners subsequently filed a Motion to Quash the subpoena, and Judge Kelly heard the motion on November 26, 2025. Petitioner and his counsel both failed to appear at the hearing, despite receiving notice from the Court. On February 5, 2026 the Judge Kelly issued an Order denying Petitioners' Motion to Quash.

On February 11, 2026, Petitioners filed a motion to reconsider Judge Kelly's order denying the motion to quash and for a protective order. On March 16, 2026, Judge Kelly issued an order denying the motion to reconsider the denial of the motion to quash finding that "the motion does not present any newly discovered evidence, manifest errors of law or fact, or an intervening change in controlling law that would warrant relief under SCRCR Rule 59(e)."

ARGUMENTS

I. THE COURT SHOULD DISMISS THIS PETITION AS IMPROVIDENTLY GRANTED

Respondents reiterate the arguments they made when they first challenged this Petition. What Petitioners seek in this matter is rare. Petitioners seek the unusual relief of issuance of a Writ of Injunction from this Court directed to PNC Bank and the Beach/Tuten Respondents to prevent the Bank from providing, and the Petitioners from obtaining, information that Circuit Court Judge R. Keith Kelly has already ruled must be produced, and for a protective order preventing PNC Bank from complying with the subpoena served upon it.

Petitioners are using this Petition in lieu of an appeal⁹ since the law is settled that Judge Kelly's order is not an appealable intermediate order pursuant to S.C. Code Ann. § 14-3-330 (2015). *See Ex Parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005) (“an order quashing a subpoena duces tecum issued to a nonparty prior to commencement of enforcement of a judgment, is interlocutory and not immediately appealable”). Surely if an order granting a motion to quash is not immediately appealable, then neither is an order denying the motion. *See Wayne Smith Const. Co., Inc. v. Wolman, Duberstein and Thompson*, 294 S.C. 140, 363 S.E.2d 115 (Ct. App. 1987) (Court of Appeals noted appellant took an interlocutory appeal from an order denying motion to quash deposition notices but the Supreme Court dismissed because the interlocutory order was not immediately appealable). *See also Marchant v. Doe*, 2022-UP-413 (S.C. Ct. App. filed Nov. 23, 2022) (although an unpublished order, the Court of Appeals held the denial of a motion to quash a subpoena and for a protective order was not immediately appealable and dismissed the

⁹ We know this is so because part of the relief Petitioners sought was a reversal of Judge Kelly's order. See Petition, p. 4 (requesting that Judge Kelly's order be “reversed”).

appeal).¹⁰

In *Ex parte Wilson*, this Court compared an order regarding the motion to quash a subpoena to a nonparty to an interlocutory discovery order, which is not immediately appealable under settled law. The Court stated:

We have previously held an order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974); *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985). Also, we have held an order directing a nonparty to submit to discovery is not immediately appealable. *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Similarly, an order quashing a subpoena duces tecum issued to a nonparty prior to commencement of enforcement of a judgment, is interlocutory and not immediately appealable. This discovery order is not a final order because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined.

Ex parte Wilson, at 13, 625 S.E.2d at 208. See, also, *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (“[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.”); *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 582 S.E.2d 405 (2003) (holding an order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) (“[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.”).

This Court “will not ... use a common-law writ of certiorari as a substitute for a party’s

¹⁰ Petitioners acknowledge that they were advised not to attempt an appeal. (Petition, p. 11-12).

right of appeal.” *State v. Price*, 441 S.C. 423, 434, 895 S.E.2d 633, 639 (2023). The Petition and the arguments Petitioner offers failed to establish a legitimate basis under settled precedent for this Court to issue a *Writ of Injunction*.

This Court should have dismissed the Petition, denied the Stay, and permitted the parties to complete discovery in preparation for trial which is scheduled in August 2026. The Court should do so now.

II. THE CIRCUIT COURT DID NOT VIOLATE THE MEDIA SHIELD STATUTE OR THE FIRST AMENDMENT

The burden of establishing entitlement to a privilege is on the proponent of such privilege; when the court does not have sufficient information to determine the privilege applies, that burden is not satisfied. *McCoy v. City of Columbia*, CA No. 5:10-132-JA-KDW, 2012 WL 1752925 (D.S.C. 2012), citing *Fed. Trade Comm. v. TRW, Inc.*, 628 F.2d 207, 212 (D.C. Cir. 1980); *AVX Corp. v. Horry Land Co., Inc.*, 4:07-3299-TLW-TER, 2010 WL 4884903 (D.S.C. Nov.24, 2010) (noting burden is on proponent of attorney client privilege).

Under S.C. Code Ann. § 19-11-100(A) (1993), the privilege applies to “a person, company, or entity engaged in or that has been engaged in *the gathering and dissemination of news for the public* through a newspaper, book, magazine, radio, television, news or wire service, or other medium....” (Emphasis added). Every word in this statute has meaning and describes its limited and qualified application. *See In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage[] or superfluous”). Therefore, this matter requires this Court to analyze each phrase before deciding whether Section 19-11-100 applies to Petitioners and their

activities in this case.

1. Who is a “Reporter” or “Journalist”?

The initial inquiry is whether Petitioner Roman is, in fact, eligible to claim protection under the Media Shield Law for his activities in this case. As the Supreme Court observed:

[S]ooner or later, it [will] become necessary to define those categories of newsmen who qualify for the privilege—a questionable procedure in light of the traditional doctrine that liberty of the press is the right of the lonely pamphleteer just as much as the large, metropolitan publisher.

Branzburg v. Hayes, 408 U.S. 665, 703–04 (1972).

Several federal circuit courts have adopted an “intent” test to evaluate the scope of the First Amendment’s qualified privilege. *In re Madden*, 151 F.3d 125, 129-130 (3d Cir.1998); *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir.1993) (“this test does not grant status to any person with a manuscript, a web page or a film, but requires an intent at the inception of the newsgathering process to disseminate investigative news to the public. As we see it, the privilege is only available to persons whose purposes are those traditionally inherent to the press; persons gathering news for publication. It is the burden of the party claiming the privilege to establish their right to its protection.”); *von Bulow v. von Bulow*, 811 F.2d 136, 144 (2nd Cir.1987) (“in order successfully to raise a claim of privilege under the New York Shield Law, a professional journalist must have obtained the information in the course of gathering news for publication.”); *Id.* (“the individual claiming the privilege must demonstrate, through competent evidence, the intent to use material—sought, gathered or received—to disseminate information to the public and that such intent existed at the inception of the newsgathering process”). Under the “intent” test, people seeking protection under the federal journalist’s privilege must show “that they: (1)

are engaged in investigative reporting; (2) are gathering news; and (3) possess the intent at the inception of the news-gathering process to disseminate this news to the public.” *Madden*, 151 F.3d at 131. In adopting this test the Third Circuit reasoned, among other things, that the “test is ... consistent with the Supreme Court’s concerns that the privilege apply only to legitimate members of the press.” *Id.* at 130 (citing *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938)).

This Court has never defined “reporter” or “journalist” for purposes of the News Media Shield Law. *BidZirk, LLC v. Smith*, C.A. No. 6:06-0109-HMH-WMC, 2006 WL 8443267 (D.S.C. 2006), slip at 4 (South Carolina’s shield law...does not define the terms “journalist” or “reporter.”). The *Shoen* Court indicated that the journalist’s privilege was designed not to protect a particular journalist, but “the activity of investigative reporting more generally.” *Shoen v. Shoen*, 5 F.3d at 1293. These federal appellate court cases provide persuasive considerations in trying to decide whether one who self-proclaims eligibility for protection under the Media Shield Law actually deserves that protection. As the D.C. Circuit observed:

The proliferation of communications media in the modern world makes it impossible to construct a reasonable or useful definition of who would be a “reporter” eligible to claim protection from a newly minted common law privilege. *See [In re Miller*, 397 F.3d 964, 979 (D.C. Cir. 2005), superseding opinion at *In re Miller*, 438 F.3d 1141, 1156-1157 (D.C. Cir. 2006)] (Sentelle, J., concurring) (questioning whether the definition of “reporter” should include “the stereotypical ‘blogger’ sitting in his pajamas at his personal computer posting on the World Wide Web”). Reporters cannot be readily identified. They do not have special courses of study or special degrees. They are not licensed. They are not subject to any form of organized oversight or discipline. Thus, reporters as a group are very different from and much less distinct than the psychotherapists addressed in [*Jaffee v. Redmond*, 518 U.S. 1 (1996)]. Without more definition for those entitled to invoke a reporter’s privilege at common law, it can hardly be said that such a privilege would be certain or narrowly drawn. *See [Upjohn Co. v. U.S.*, 449 U.S. 383, 393 (1981)] (“An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all.”).

Lee v. Department of Justice, 401 F.Supp.2d 123, 140 (D.C.C. 2005); *BidZirk, LLC v. Smith*, (quoting *Lee*).

The only proof Petitioner Roman offers that he is a “reporter” or “journalist” is his own affidavit. Respondents have obtained information through discovery (designated “confidential” by the Parker Defendants) as well as through independent means (subpoena production from Defendant Parker’s personal bank) that indicates that, through a complex series of transactions designed to mask the source of payment to Petitioners, Petitioner Roman engaged in information gathering not with the intent at the inception to disseminate the “news” to the public but rather to assist a private individual in a public smear campaign of litigants and the South Carolina judiciary for the purpose of impacting litigation in South Carolina.¹¹ He was not, in that instance, “engaged in the gathering and dissemination of news for the public” as required by Section 19-11-100. *Cf. Diaz v. Eighth Jud. Dist. Court*, 993 P.2d 50, 59 (Nev. 2000) (Supreme Court of Nevada held Nevada’s News Shield Statute protected news reporter who gathered information while investigating a traffic collision from compelled disclosure of the contents of a published article or to answer questions; Court added “[w]e emphasize that our decision today extends protection only to the journalist’s newsgathering and dissemination activities within the journalist’s professional capacity. Nevada’s news shield statute provides no protection for information gathered in other capacities.”).

¹¹ At the time Respondents had ongoing litigation against Defendant Parker and his business arising out of the sale of alcohol to Paul Murdaugh which contributed to the death of Mallory Beach (the “Boat Wreck” case). Circuit Court Judge Dan Hall was presiding over the litigation. The current litigation involves clandestine activities done on Defendant Parker’s behalf to skew opinion and negatively impact Respondents’ side of the Boat Wreck case. Plaintiff has unearthed evidence that Petitioners were integral to that effort.

As the Supreme Court of California explained:

There is no dispute in this case that the reporters were acting as newsmen and were directly engaged in the process of “gathering, receiving or processing of information for communication to the public” within the meaning of the shield law when they observed the events as to which their testimony is sought. We emphasize, however, the importance of this requirement. As the Times itself recently recognized, the shield law provides no protection for information obtained by a journalist not directly engaged in “gathering, receiving or processing” news. In an editorial criticizing the Court of Appeal decision in this case, the Times correctly observed that “A reporter who, say, wanders into a liquor store on his way home from work and witnesses a holdup could not invoke the shield law and refuse to testify. *Off the job, a journalist is no different from any other citizen.*” (*Breaking the Shield*, L.A. Times (July 20, 1988) Metro Section, pt. 2, p. 6, col. 1, italics added.) We agree.

Delaney v. Superior Court, 789 P.2d 934, 940 n. 8 (Cal. 1990) (emphasis added).

Respondents attempt to obtain bank records to tie nearly \$400,000¹² in wire transfers Defendant Parker made from Truist Bank to an entity called “Demoman” in June 2020, the first of which occurred on the same day Petitioner entered into investigation agreements with Defendants Max Fratodi, Henry Rosado and Investigative Services (“the Investigators”).¹³ This activity does not amount to newsgathering and dissemination of news for the public for either

¹² These payments were at a minimum \$383,000 from one source, Defendant Parker’s account with Truist Bank. The records Respondents seek will establish the full extent of the money Defendant Parker paid to Petitioners for the narrative they sought to create and their attempts to wear the Beach family down through intimidation, including threats to release the photos of Mallory Beach’s body when law enforcement discovered her over a week after the boat wreck.

¹³ The Investigators attempted to amend their answer to assert a cross-claim against Petitioner but the circuit court denied that motion. The Investigators then attempted to depose Petitioner and despite properly serving him with a subpoena, he failed to show for the deposition. It is noteworthy that counsel for Petitioner before this Court was *also* counsel of record for the Investigators at that time and remained so until very recently seeking withdrawal. *Cf.* Rule 1.9, RPC, Rule 407, SCACR (precluding a lawyer from representing a party on both sides of the “v” where there is an actual conflict of interest with another party to the litigation without informed consent).

Section 19-11-100 or the First Amendment.

2. Engaged in the Gathering and Dissemination of News

As noted, the statute does not define “gathering and disseminating of news”; instead, the statute provides examples of the types of media through which news is “gathered and disseminated,” using an open-ended list that concludes with “or other medium.” The question remains: Under this statute what is “the gathering and disseminating news”?

“News gathering and dissemination” for purposes of reporter shield laws generally includes the activities of those engaged in collecting, editing, or writing news intended for public distribution via newspapers, books, magazines, radio, television, wire services, or other media. This protection often extends to traditional institutional press personnel such as reporters, editors, photographers, and publishers, but may also include nontraditional journalists such as independent filmmakers, book authors, and investigative journalists, provided their intent at the inception of newsgathering is public dissemination of information. In summary, South Carolina’s Shield Law defines news gathering and dissemination functionally — as the collection and public distribution of news through any recognized media medium — and extends its qualified privilege to all information obtained or prepared in the course of those activities.

What Petitioners did in this case was not journalism or newsgathering for public dissemination; Petitioner Roman’s contacts in this matter did not involve “source material” for a story Petitioners were supposedly developing about the corruption rampant in the South Carolina judiciary. Instead, in hiring the Investigators Petitioners were engaged in a private enterprise (in fact, a joint venture with the Defendant Parker as well as the Investigators deemed the “Litigation Mitigation” team) for which they were paid handsomely, using others to assist a party (Defendant

Parker) in litigation by pushing a public narrative about the case and trying to intimidate the Beach family.¹⁴ The Media Shield Law is not as broad as Petitioners maintain, nor should it be. *Cf. State v. Brockmeyer*, 406 S.C. 324, 337 n. 9, 751 S.E.2d 645, 652 n. 9 (2013) (this Court agreed with the trial court that the identity of an anonymous commenter on a television station’s website – not obtained through news-gathering activities – was not “source material” and therefore fell outside the scope of the news media shield law). *See also In re Napp Technologies, Inc. Litigation*, 768 A.2d 274, 280-281 (N.J. Super. 2000) (holding a public relations firm was not protected by New Jersey’s media shield law for gathering information with the intent “to manage the news rather than disseminate it”).

Petitioners received hidden payments in a clandestine effort for propaganda dressed up as legitimate “news.” They were not engaged in gathering and disseminating news in this case. They should not enjoy any privilege under the statute or the First Amendment for their covert activities.

3. For the Public

To meet the threshold requirements under the statute the newsgathering and dissemination must also be “for the public.” *See Castellani v. Scranton Times, L.P.*, 956 A.2d 937 (Penn. 2008) (“the protections recognized in the Shield Law are intended to allow the news

¹⁴ Respondents served discovery on the Parker Defendants in the “Boat Wreck” case and asked about Petitioners, *i.e.*, who they were and what they were doing. Defendants responded that what Petitioners were doing had nothing to do with anything in the case. Through discovery in this case Respondents now know what Petitioners were doing and for whom. Respondents are seeking only those records that connect Petitioners efforts to create the public narrative and discourage the Beach family in the Boat Wreck case (including the dissemination of the photographs of Mallory Beach’s body at the time law enforcement discovered it) to the payments to Demoman in June 2020.

media to serve the public. Indeed, describing the Shield Law’s protections in common evidentiary privilege terms, while the news media may be the ‘holder’ of the protection, the general public is deemed to be the overall beneficiary of the Shield Law’s protections.”)

Even if Petitioners were engaged in “newsgathering,” they were not doing so for dissemination “for the public.” Hiring the Investigators to gather information for a private individual who was a party in litigation so as to create a narrative in that litigation environment, including an assault on one circuit court judge and his family,¹⁵ does not meet the statutory requirement that information gathering be done “for the public.”

4. If the Privilege Applies it Is Qualified

Next, even where news gathering and dissemination activities for the public are established, the privilege is qualified rather than absolute. A party seeking to compel production or testimony must establish by clear and convincing evidence that the privilege has been knowingly waived, or must satisfy the statutory balancing test. Section 19-11-100(B). *Cf. Hartsock v. Goodyear Dunlop Tires North America Ltd.*, 422 S.C. 643, 648 n. 2, 813 S.E.2d 696, 699 n. 2 (2018) (this Court noted that the qualified privilege enjoyed by news media under Section 19-11-100 (A) can be overcome when the requesting party establishes that the privilege was waived or fulfills the stringent balancing test articulated in Section 19-11-100(B)).

Not all inquiries into a reporter’s sources are protected by the statute. *See Matter of*

¹⁵ As part of the scope of the work the Investigators gathered information on Judge Hall, who was presiding over the companion boat wreck case, and Judge Hall’s wife. This included financial records, property records and traffic tickets. They created a complete dossier on Judge Hall and his family while he was presiding over that case.

Decker (Court held the reporter's shield law was not applicable to a case in which disclosure of a reporter's confidential source was sought by the trial court itself, rather than by a party to the underlying proceeding, because the statute requires that the one asserting the privilege not be a party in interest).¹⁶ Assuming the statute applies to provide a privilege, the Media Shield Statute provides further:

(B) The person, company, or other entity may not be compelled to disclose any information or document or produce any item obtained or prepared in the gathering or dissemination of news unless the party seeking to compel the production or testimony establishes by clear and convincing evidence that this privilege has been knowingly waived or that the testimony or production sought:

- (1) is material and relevant to the controversy for which the testimony or production is sought;
- (2) cannot be reasonably obtained by alternative means; and
- (3) is necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.

S.C. Code Ann. § 19-11-100(B). The privilege is, therefore, not absolute but is qualified and may be overcome as set forth in the statute. *Trial Handbook for South Carolina Lawyers* § 23:15 (5th ed.) (citing *Decker*).

The material Plaintiffs seek involves the bank records tying the wire payments from Defendant Parker to Petitioners as well as the Investigators. Plaintiffs have already established a

¹⁶ Respondents do not concede that a private litigant's payments for editorialized content are, or ever could, reveal source material as those terms are used in Section 19-11-100. This is especially true where Defendant Parker revealed to the Wall Street Journal that he hired Petitioner Roman and utilized him in the effort to control a narrative in Hampton County of judicial corruption and to question the integrity of the family of Mallory Beach.

temporal connection,¹⁷ but because of the manner in which attorney Jason D’Cruz set up the transactions discovery from the Defendants and the Investigators contains a gap in that connection which can only be filled by the records controlled by Petitioners’ bank.¹⁸

5. Even if the Privilege Applies to Petitioner He has Waived It

Finally, assuming Petitioner Roman is a “reporter,” that his activities in this case meet the definition of being “engaged in the gathering and dissemination of news,” and those activities were “for the public,” by entering into the private agreement with Defendant Parker through a series of transactions with others designed to hide the connection, Petitioners have waived any qualified privilege under Section 19-11-100. *Compare In re Venezia*, 922 A.2d 1263, 1271 (N.J. 2007) (“a reporter may lose the sweeping protections of the Shield Law if the reporter abandons the privilege by disseminating information outside of the newsgathering and news reporting process.”). Respondents must have the opportunity to obtain the evidence necessary to complete the chain from Defendant Parker to Petitioners.

In sum, Petitioners’ activities in this case do not meet the threshold requirements either under the Media Shield Statute or the First Amendment for permitting Petitioners to enjoy the

¹⁷ Records from Truist Bank reveal one wire payment for \$143,000 was made on June 1, 2020, the same day Petitioner Roman entered into the agreement with the Investigators. The remaining payments were made on July 1, 2020 (\$120,000) and July 30, 2020 (\$120,000).

¹⁸ Plaintiffs would seek it directly from Petitioner but he has deliberately evaded process and cooperation not only with Plaintiffs but with the Investigators. Furthermore, Petitioner would raise the same spurious claims to protection under the Media Shield Statute or the First Amendment that he has raised in this matter before this Court.

protections against production of the information Respondents (and the Investigators) seek. The Court should deny the relief and remit this matter to Judge Kelly for him to proceed with the case.

III. PETITIONERS' CLAIM OF A LACK OF NOTICE IS BASELESS

Petitioners contend that Judge Kelly should not have addressed the pending motion to quash because there was no notice that the motion was before the court, and further there was no evidence in opposition to the submissions Petitioners filed in support of the motion. They contend it was improper for Judge Kelly to take the motion up and rule upon it. The Court should reject these contentions.

First, Petitioners made these precise arguments to Judge Kelly. See Exhibit C to the Petition (Motion for Reconsideration and attachments). Judge Kelly considered the arguments and rejected them. Also, Exhibit A to the motion for reconsideration contains the email threads placing all parties and non-parties (including Petitioners through their counsel) on notice that Judge Kelly intended to schedule a hearing to take up *all* outstanding motions. Although Petitioners' counsel did not specifically request that the motion to quash be heard, Petitioners' counsel did not respond to numerous specific inquiries (emails and phone calls) from Judge Kelly's law clerk as to why counsel was not present at the hearing. The law clerk informed Judge Kelly that despite reaching out to counsel for Petitioners and leaving messages there was no response. Petitioners chose to stay away from the hearing without advising the Court that neither Petitioners nor their counsel intended to attend the hearing.

Even so, Petitioners' motion and memorandum was served and filed and was before the

Court. Petitioners fully briefed all of the arguments before Judge Kelly. Unless a rule specifically requires a hearing, a circuit court judge may decide a motion without oral argument. *Compare Re Civil Motions Pilot Program*, 414 S.C. 162, 777 S.E.2d 546 (2015) (“the trial court may grant oral argument in its discretion or may rule without further notice on the written filings without scheduling oral argument. Oral argument shall be had on all dispositive motions unless the parties agree that no such argument is necessary”).

Petitioner cites to *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (1992) in support of his contention that Rule 6(d), SCRCF, mandated a hearing and ten (10) days’ specific notice. (Brief of Petitioner, pp. 19-20). The Court should not be persuaded.

First, Petitioners’ counsel had notice that Judge Kelly intended to take up all outstanding motions at the hearing. If counsel wanted clarity he could have responded to Judge Kelly’s law clerk as to whether oral argument would be held on Petitioners’ motion to quash. Counsel did not do so. Instead, he remained silent in the face of notice that all pending motions would be taken up at the hearing.

Second, nothing in the Rules of Civil Procedure mandated a hearing on the motion to quash a subpoena. Instead, once there is an objection to a subpoena the court may quash or modify the subpoena. Rule 45(c)(3)(A), SCRCF. Nothing in Rule 45 mandates a hearing with oral argument on any objection to a subpoena.

Due process assumes someone was denied an appropriate opportunity to be heard. Petitioner was heard through his written filings and given notice of the hearing. The *Dedes* case, which involved a dispositive summary judgment motion, did not mandate a hearing on Petitioner’s motion to quash a subpoena. The Court should reject this argument.

IV. THERE IS NO “PATTERN OF SHIELD LAW VIOLATIONS” IN THIS CASE

Petitioners assert there has been “more than an isolated procedural irregularity” regarding efforts by Respondents to obtain information from him as well as the Investigators join him as a party. (Br. Pp. 29-31). The Court should not be persuaded by Petitioners’ arguments.

First, these arguments presume the Media Shield Statute applies to Petitioner Roman in this situation. As argued above it does not. Thus, there was no reason for Judge Kelly to perform the three-part test found in Section 19-11-100(B).

Second, the Investigators (Petitioners’ counsel’s other clients in this case) properly domesticated their subpoena under the UIDDA and as well served notice upon Petitioners’ counsel for the deposition. *Compare* Rule 5(b)(1), SCRCP (requiring service upon a party represented by an attorney to “be made upon the attorney unless service upon the party himself is ordered by the court”). Although Petitioner Roman is not a party service of a notice of deposition upon his attorney was effective.

Petitioners also contend the Pennsylvania Shield Law provided them independent protection from the discovery or deposition. (Br. pp. 32). The Court should not find Petitioners’ argument persuasive.

The Pennsylvania Shield Law “was enacted to protect the free flow of information to the news media in their role as information providers to the general public.” *Castellani v. Scranton Times, L.P.*, 956 A.2d 937, 951 (Penn. 2008). The privilege protects the media from revealing source information, but that protection is not absolute. *Compare Hatchard v. Westinghouse Broadcasting Co.*, 532 A.2d 346 (Penn. 1987) (Pennsylvania Supreme Court held “unpublished documentary information gathered by a television station is discoverable by a plaintiff in a libel

action to the extent that the documentary information does not reveal the identity of a personal source of information or may be redacted to eliminate the revelation of a personal source of information”). Where the individual falls outside the category of “news media in their role as information providers to the general public” (as Petitioner Roman does in this case), the Pennsylvania law offers him no protection.

Lastly, Petitioners contend sanctions should flow against counsel for the Investigators as well as counsel in Pennsylvania. Petitioner cites to Rule 4.5, RPC and well as Rule 4.4, RPC, and further claims these efforts to obtain information amount to “frivolous motions and discovery abuse.” (Br. Pp. 34-35).¹⁹ The Court should reject these assertions.

As noted, all of Petitioners’ arguments assume Petitioner Roman is protected by the Shield statutes in South Carolina and in Pennsylvania for the activities he undertook in this case. The plain language of the South Carolina statute and the Pennsylvania Supreme Court’s interpretation of the Pennsylvania statute say otherwise. There has been no pattern of shield law

¹⁹ It is ironic that Counsel for Petitioners raises potential violations of the Rules of Professional Conduct in the Brief. Counsel appeared on behalf of the Investigators early on in this litigation. On January 13, 2022, he co-signed a Motion to Dismiss; on February 22, 2022, he co-signed an Answer; and on August 25, 2022, he co-signed a Motion for Summary Judgment, all on behalf of the Investigators/Defendants. See *Ex parte Strom*, 343 S.C. 257, 263-264, 539 S.E.2d 699, 702 (2000) (“Once an attorney has made a formal appearance and becomes attorney of record in an action, withdrawal can only be accomplished by order of the court.”). He now represents Petitioners in the same or substantially related matter and seeks sanctions against his own current/former clients – he does so without their informed consent. See Rule 1.9(a), RPC, Rule 407, SCACR. In fact, at a hearing before Judge Kelly in York County on May 15, 2026, Petitioners’ counsel stood up, acknowledged he was still counsel of record for the Investigators, and requested Judge Kelly relieve him as counsel for the Investigators so that he could then argue the sanctions motion against the Investigators on behalf of Petitioners, which he proceeded to do. Counsel had consent to withdraw as counsel for the Investigators but did not have their consent to then proceed against them in this same matter.

violations in this case.

The Court should dismiss this Petition as improvidently granted and remand this matter to Judge Kelly to proceed with the litigation.

V. ALTERNATIVELY, THE COURT SHOULD REFER THIS MATTER TO A REFEREE FOR AN INITIAL RULING

Assuming the Court accepts Petitioner Roman's unsupported claim that he is entitled to protection under the Media Shield Statute or the First Amendment for the activities on behalf of a private party to a lawsuit, the Court should refer this matter for an evidentiary hearing.

As noted in Respondents' Answer, this Court has authority to find facts in its original jurisdiction. *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 497, 685 S.E.2d 600, 607, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009). Rule 245 provides "[t]he Supreme Court may provide for discovery, fact finding and/or a briefing schedule as necessary." Rule 245(c), SCACR (last sentence). Petitioners have admittedly and deliberately avoided service of process for years to this date. By this Petition they have submitted to the jurisdiction of this Court.

Respondents respectfully request that the Court order Petitioner Roman to appear in person and submit to a deposition as well as provide proof, other than his self-serving affidavit, to support his request for injunctive relief. The Court has previously assigned either a single member of this Court or a circuit court judge to act as a special referee to obtain proof in prior original jurisdiction matters. *See* S.C. Code Ann. § 14-3-340 (1977) ("Whenever in the course of any action or proceeding in the Supreme Court arising in the exercise of the original jurisdiction ... an issue of fact shall arise ..., or whenever the determination of any question of fact shall be

necessary to the exercise of the jurisdiction conferred upon the Supreme Court, the court may frame an issue therein and certify the same to the circuit court”). *See also, e.g., Rogers Townsend & Thomas, PC v. Peck*, 419 S.C. 240, 797 S.E.2d 396 (2017) (in original jurisdiction matter Court appointed then circuit court Judge Stephanie P. McDonald to find facts and make recommendations); *Ex parte Smith*, 407 S.C. 422, 756 S.E.2d 386, 386 (2014) (this Court granted the petition for original jurisdiction in this case and appointed circuit court Judge Clifton Newman to serve as special referee); *Medlock v. University Health Services, Inc.*, 404 S.C. 25, 743 S.E.2d 830 (2013) (appointing Master in Equity James O. Spence as referee to take evidence and provide a report and recommendation to this Court); *Wehle v. SC Retirement System*, 363 S.C. 394, 611 S.E.2d 240 (2005) (appointing then circuit court Judge John W. Kittredge to take evidence and issue a report and recommendation to the Court); *City of Columbia v. Tindal*, 43 S.C. 547, 22 S.E. 341, 344 (1895) (in an action “in the original jurisdiction of this court,” stating, “There being a necessity for some testimony, [the action] was referred, under an order from this court, to [a] special referee”). The Court should do so in this matter and direct the referee to conduct limited discovery (under a protective order or *in camera* proceeding if appropriate) before entering any order granting the relief Petitioners seek.

Alternatively, if the Court believes the Media Shield Law or the First Amendment are implicated by Petitioner Roman’s actions for a private individual in the Boat Wreck case, the Court should remand the matter to Judge Kelly to conduct the hearing described by Section 19-11-100(B). The factual record in this case has not been developed to a level sufficient to find Petitioner Roman has borne his burden necessary to obtain the protection he seeks, or to permit Respondents to establish the need for the information Petitioner Roman seeks the bank to

withhold.

Either the Referee or Judge Kelly can receive the records *in camera* and segregate those portions traceable to the payments to known entities in this matter while maintaining the confidentiality of “source” information Petitioners claims they must have.

CONCLUSION

For the reasons stated the Court should dismiss this matter or hold that Petitioners do not fall within the protections of the Media Shield Act or the First Amendment for the activities they conducted in this case. Alternatively, the Court should appoint a Receiver with the authority to order discovery, including Petitioner Roman's deposition, and examine the bank records *in camera*, or remand the matter to Judge Kelly to do the same.

Respectfully submitted,

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