

THE STATE OF SOUTH CAROLINA
In The SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Judge Fourteenth Judicial District
J. Ernest Kinard, Judge, Fourteenth Judicial District
Marvin H. Dukes, III, Beaufort County Master-in-Equity.

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JAN 15 2015

SC Court of Appeals

S.C. Court of Appeals Case No: 2014-000148

Alexander PasteneAppellant,

v.

Thomas Trobough, Mr. & Mrs. Norman
Ginsburg, W. Richard Beetle, Country
Club of Hilton Head, ClubCorp. of Dallas,
Tx., CCH, Tennis Committee Members.....Respondents.

APPELLANT’S RESPONSE TO RESPONDENTS’ CCHH, CLUB CORP,
CCHH TENNIS COMMITTEE, AND GENERAL MANAGER W. RICHARD
BEETLE REPLY TO APPELLANT’S MOTION TO SUPPLEMENT HIS
RECORD ON APPEAL, AND MOTION TO STAY TIME FOR FILING
FINAL BRIEFS, DATED JANUARY 9, 2015.

Comes Now, the Appellant Alexander Pastene on this 15th day of
January of 2015, and responds to Attorney Mary B. Lohr’s Reply to
Appellant’s Motion to Supplement his Record On Appeal by stating as
follows:

That, he Respondents’ Reply of 1-9-15, may have been redacted out
expediency by Attorney Lohr, with total disregard to the magnitude of her
hypocrisy and intentional blunders —how did the attorneys for the
Respondents manage to have an ongoing court case with a pending motion
closed, despite the Appellant’s repeated protestations?

Notwithstanding, attorney Lohr had the effrontery of objecting to the Appellant's Motion to include his Polygraph Examination as being not part of the record of this case, irrelevant, and prejudicial, in a case where the attorneys for Respondents lied to the South Carolina Supreme Court. Meanwhile, the Appellant is still waiting for his day in court in a creditable case that Attorney for the other Respondents Terry Finger, as he habitually quibbles, portrayed as being "frivolous", although it involves two tennis players who against Club Rules, assailed an employee for doing his job as ordered; a General Manager who, with the knowledge, support and instructions of his employer Club Corp of Texas, intentionally ignored the growing aggression under his watch and chose to "look the other way" as stated by the Appellant in the face his Complaint, which actions and inactions constituted intentional negligence and failure to exercise duty of care, which the Appellant initially unintentionally labeled as being accessory to the assaults. Subsequently, the General Manager took revenge against the Appellant and unfairly fired him, alleging *inter alia* defamatory statements falsely brought by the wife of one of the assailants and the CCHH Tennis Committee. All in all, the instant was *ab initio* a fairly simple case that should never have taken so much time to resolve, while is still ongoing by the hand of opportunistic and hypocritical attorneys, who could be the subject of impeachment and disbarment for lying to the South Carolina Supreme Court. Anyway, in the words of Garry Wills: *It would take a fierce determination to ignore the obvious*.

Incidentally, Judge Kinard's Order of 3-2-12 never intended to dismiss the case at bar. The Order to Dismiss was clearly explained by Judge Kinard during the hearing of February 8, 2012, where he stated in plain English to the Appellant and Attorney Lohr, that he was not throwing the case out, see Transcript R. p.7 lines 9-10; R.p13, line 13, et seq. Judge Kinard's intention was clear during the hearing as well as in his Order of 3-2-12, to correct or amend errors and deficiencies, which the

Appellant timely complied according to what he understood Judge Kinard wanted corrected. But, but, of course the Appellant wanted to comply and cooperate with the Courts; who could not possibly see this after seeing him explain in person and reading his writings? Eventually, the Appellant realized that he had mislabeled his causes of action and, thus, amended accordingly, but this was not enough for the Respondents; they and their attorneys wanted the case conveniently thrown out and the bullish and arrogant offenders let go without consequences at the Appellant expense with disregard justice and the damages and injuries caused him.

Never, (bolded for emphasis) did Judge Kinard during the hearing of 2-8-12, use the word RE-FILE. “Re-file” is the misleading word used by Attorney Mary Bass Lohr (in her prepared Order subsequently signed by Judge Kinard) to characterize the Appellant’s ANSWER of 5-12 as a refusal to comply to Judge Kinard’s Order of dismissal. No one ordered the Appellant to re-file his case as stated by Attorney Lohr in her “prepared Order” and on page 6 of the Respondents Initial Brief. Meanwhile, the Appellant bent over backwards in his Complaint to explain in detail what had transpired at the club. Not only the Appellant respectfully and timely responded to Judge Kinard in his ANSWER, *see R. pp. 37- 42*; but also did in his Letter to Judge Kinard of 9-17-12, *see R.p.146*; and Appellant’s Affidavit of 9-14-12, *see R. p.151, et seq.* No; the Appellant did not and never intended to challenge Judge Kinard’s Order, while the Appellant “timely responded” to Judge Kinard’s Order of 3-2-12.

In Attorney Lohr’s page 7 of her Initial Brief she stated that the Appellant’s ANSWERS of April 2012 to Judge Kinard ...***in no way could be considered to be an amended complaint or a re-filed complaint***... Well, contrary to Attorney Lohr’s views, personal desires and opinions within the distorted medium of her imagination, the Appellant intended to correct and amend, while never refused to comply with Judge Kinard’s Order.

Furthermore, Ms. Lohr's words used in Judge Kinard's Order came from her "notes" and not the Official Court Recorder's Transcript, see R. p.133. Since when Attorney Lohr's personal "notes" are allowed to trump the Court Recorder's Transcript? Besides, the Transcript should be interpreted as a whole in an effort to ascertain the judge's intention that he wanted the Appellant to fix, amend, clarify his Complaint, which he did and not file again to be compelled to face attorneys Lohr and Finger's certain *Res Judicatas*. Re-filing would have required issuing new Summonses and filing new Complaints along with payment of filing fees, *et cetera*. Attorney Lohr's conclusions are wrong, expedient, devoid of any consideration to the Appellant's tribulations, which he was **unnecessarily** put through by the hand of the Respondents and their attorneys in the instant case —just as he was unfairly put through by attorney Lohr, *et al*, during the case against the Beaufort County School District, *et al*, where she represented a lying City of Beaufort Police Officer and the un-cooperating City of Beaufort Police Department. Attorney Lohr's first paragraph on page 5 of her Brief brags about ...a previously *successful* defense... [through subterfuge and lies] where the plaintiff (victim) was left without relief and the defendants (culprits) were let go without consequences...so much for her disgusting bragging. The Appellant appends herewith his much relevant Polygraph Examination to the instant Reply along with his letter to Assistant Principal/Beaufort County Councilman Herbert Glaze. R. pp.106-108.

Wherefore, the Appellant pleads with this Honorable Court of Appeals that he is granted a Jury Trial against the Respondents as soon as possible, as requested *ab initio*, so, that justice can be done between the parties.

Respectfully submitted,



ALEXANDER PASTENE, *pro se* Appellant
Post Office Box 22298, Hilton Head Is.,
SC, 29925, Tel. 843-605-5266

Mary B. Lohr, Esq.
P.O. Box 40, Beaufort, SC 29901

Terry Finger, Esq.
P.O. Box 20045, Hilton Head Is., SC 29925

Attorneys for the Respondents.

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Alexander PasteneAppellant,

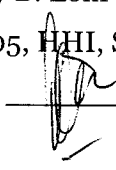
v.

Thomas Trobough, Mr. & Mrs. Norman
Ginsburg, W. Richard Beetle, Country
Club of Hilton Head, ClubCorp. of Dallas,
Tx., CCH, Tennis Committee Members.....Respondents.

CERTIFICATE OF MAILING

The Appellant certifies that on this 15th day of 2015, he served copies of his Response to Attorney Mary B. Lohr's Reply of January 9, 2015, at their respective domiciles at P.O. Box 24005, HHI, SC 29925, and PO Box 40, Beaufort, SC 29901.

Signed: Alexander Pastene _____





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SC Court of Appeals

POLYGRAPH EXAMINATION STATEMENT OF RELEASE AND RIGHTS
ATTORNEY-CLIENT

Place: 101 Executive Centre, Hilton Head Date/Time: 3-22-05 4:24PM

I, Alexander Postone, age 64, do hereby voluntarily agree, of my own free will and without threats, duress, coercion, force, promise of immunity or reward agree and stipulate to submit to an interview and verification procedure utilizing the polygraph instrument. I have had the nature of this interview and verification procedure explained to my complete satisfaction, and do hereby consent to the placing of the necessary apparatus upon my person. I further consent to the use of electronic audio and visual recording devices, and I voluntarily request and authorize PALMETTO POLYGRAPH, INCORPORATED to now proceed with the actual examination.

I do hereby authorize PALMETTO POLYGRAPH, INCORPORATED its officers, employees, and/or agents to disclose both orally and in writing the examination results and opinions to:

to determine at a later date &
officers, employees and/or agents of _____

I understand that this is being used as an interview procedure for my attorney and to be made use of by my attorney and with my consent. I understand that this is in a nature of privilege communication with my attorney and this may not be used against me without my voluntary and knowledgeable waiver of attorney-client privilege. I am fully aware that the expert opinion may be that I have not been truthful. Notwithstanding such, in consideration of and as an inducement for PALMETTO POLYGRAPH, INCORPORATED to give me this polygraph examination. I, for myself and my successors, assigns, heirs, executors, and administrators, hereby release, absolve, remise, covenant, promise, agree to save harmless, forever discharge, and hold free from all harm, liability or damage to me PALMETTO POLYGRAPH, INCORPORATED and its officers, employees, and agents individually, collectively, and personally. In addition, I knowingly remise, release, waive and forever discharge each and all the above-named from any and all suits, actions, or causes of actions at law, claims demands or liabilities either in law or in equity including but not limited to false arrest, false imprisonment, libel, slander, or invasion of all my rights which I, my successors, assigns, heirs, executors, or administrators have not or may ever have resulting directly, indirectly, or remotely from my taking said examination, possible liabilities or damages flowing from the operation of all electronic audio, visual and polygraph recording devices, the rendered oral and written opinions and statements, and/or future actions taken by and/or all of the above based upon the examination. As a further consideration and inducement for PALMETTO POLYGRAPH, INCORPORATED to give me this polygraph examination, I represent that not only am I in good mental and physical condition, but I know of no mental or physical ailment which might be impaired by the examination.

Attorney

Law Firm

Signature of Examinee

Date/Time

DOB: 9-15-40

SSN: 579-78-4678-

Signature of Polygraph Examiner

1 Initials

NATURE AND CHARACTERISTICS OF THE POLYGRAPH TEST

The polygraph examination you will be administered today will include the use of a computerized polygraph instrument(Lafayette LX-4000) which will record continuously, permanently and simultaneously on a moving chart changes in cardiovascular, respiratory and electrodermal patterns. Prior to the use of aforementioned instrument, a pre-test interview will be conducted with you wherein you will first listen to test administrator explain to you in more detail the physiology involved, the procedure used, and how the results are obtained. You will also be advised that all of the test questions will be reviewed with you and presented to you in writing before the actual administration of the polygraph test, and that no other questions will be asked on the test except those questions that will have been reviewed with you; in other words there are no surprise questions on the test. On the test itself, you will be restricted out of necessity to just a yes or no answer, but during the review of these same questions prior to the test, you have every opportunity to qualify your answers and explain anything you wish. A minimum of two separate polygraph charts, each containing the same questions, will be conducted on each test, to establish consistency hence reliability which is required by national standards and law. The results of each test will be determined solely by the physiological tracings on your polygraph charts. Thank you for your cooperation.

[Handwritten Signature]

3-22-05 4:30PM

Signature of Examinee

Date/Time

CONSENT TO INTERVIEW WITH THE POLYGRAPH

Place: 101 Executive Center Hilton Head Is, SC 29925

Date/Time: 3-22-05 - 4:30PM

I have requested a polygraph examination be administered to me regarding Beaufort County Schools Board of Education, et al. & City of Beaufort Police Department.

I have the right to refuse to take this polygraph test. (No)

If I agree to take the polygraph test, I have the right to stop the test at anytime. (Yes)

If I agree to take the polygraph test, I have the right to refuse to answer any individual questions. (No)

The Examiner shall not conduct the test if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the actual testing phase. (Yes)

I am in good physical health and have no medical problems that may affect this examination. (Yes)

[Handwritten Initials] 2 *[Handwritten Initials]* Initials

I have the right to obtain and consult with legal counsel or anyone I desire before each phase of this test. HAJ

I understand that during the polygraph test, there will be----- HAJ

- a. A pre-test interview in which the examiner goes over the facts and reviews with me the relevant test questions I will be asked on the polygraph test.
- b. The test itself in which the I will be asked the relevant questions, as well as certain other questions needed for comparison purposes, while my physiological responses are being recorded.
- c. A post-test interview in which I will be afforded a reasonable opportunity to explain and eliminate any reactions which are evident on the polygraph charts. HAJ

I was presented with all of the test questions in writing and allowed to review them before the actual administration of the polygraph test. NO

I understand that no other questions will be asked on the test except those questions that have been reviewed with me, in other words there are no surprise questions on the test. HAJ

I understand that on the test itself, I will be restricted out of necessity to just a yes or no answer, but during the review of these same questions prior to the test, I have every opportunity to qualify my answers and explain anything that I wish. HAJ

I understand that a minimum of two separate polygraph charts, each containing the same questions, will be conducted on each test, to establish consistency hence reliability which is required by national standards and law. NO

I understand that the results of each test will be determined solely by the physiological tracings of my polygraph charts. HAJ

I have been informed that the polygraph examination room **does/does not** contain an observation devise and **is/is not** being recorded. HAJ

I understand that no questions shall be asked of me concerning any lawful religious affiliations, lawful political affiliations or lawful labor activity. HAJ

I am not taking this polygraph examination in connection with or as a requirement for any employment agency. HAJ

I do not have any questions or concerns regarding this polygraph test. HAJ

I further authorize the use of the polygraph instrument attachments to my person in order that the necessary recordings. HAJ

I understand that this polygraph examination will be administered by a trained, professional polygraph examiner who is licensed in the State of South Carolina and who is a graduate of the Virginia School of Polygraph. I also fully realize, that the polygraph examiner also has the right to terminate this test at any time. HAJ

HAJ 3 HAJ Initials

I do hereby voluntarily agree, to allow the examiner to take a photograph of me and voluntarily agree to allow my finger-print image to be scanned for identification purposes only. This photograph and finger-print image will be attached to my polygraph charts. My photograph and fingerprint image will not be released unless directed by a court order. 4/20

I have carefully read all of the foregoing and fully understand all of its contents. In acknowledge thereof, I affix my signature hereunder.

3-22-05 - 4:45 PM
Date/Time
[Signature]
Signature of Examinee
9-15-40
DOB:
579-78-4678
SSN:

POST-TEST CERTIFICATION

I certify that I have taken the polygraph examination voluntarily and that I was reasonably well treated. I remained of my own free will knowing that I could cease the examination and/or interview at anytime. I was not asked any personal, private or embarrassing questions except as they related directly to the subject material of the examination.

I am aware that if I have any reason to believe that the examination or the examiner were not completely impartial, fair, or professional, I am encouraged to report this matter to the South Carolina Law Enforcement Division(SLED) in Columbia, South Carolina which regulates polygraph examiners throughout the State of South Carolina or anyone I that I may wish.

POLYGRAPH EXAMINATION RESULTS

NDI-No Deception Indicated +12
DI- Deception Indicated- () _____
INC- Inclusive () _____
DNT- Did not Test () _____

I have been informed of the results of this polygraph examination:

Examinee: [Signature]

Date/Time: 3-22-05 5:45 PM

I, Alexander Pastene would like to make the following written statement:

I decline to make a statement at this time

(AP)

The examination was concluded at 5:45 PM on the above date. I completely re-affirm in its entirety my above agreement. I remained of my own free will knowing that I could leave the room at any time I so desired, and that there were no threats, promises, or any harm whatsoever done to me during

AP 5 *(AP)* Initials

POLIGRAPH TEST - FRIDAY MARCH 18, 2005
(PASTENE V. BEAUFORT CTY. SCHO, *et al*)

1. Did you enter, intended to enter, accompany, or intended to accompany, any student, to any bathroom, in any school, or anywhere, ever?

R. No

2. Did the School Officials and others present at the administrative proceeding of November 29, 1999, violate your civil rights through false accusations, insults, and threats, and induced you to confess to having committed sexual harassment, sexual abuse, and or sexual assault against female students Hesse and Haddock?

R. Yes

3. Did the School Officials and others present at the administrative proceeding of November 29, 1999, induce you to believe that you were going to be charged and arrested that same day for committing sexual actions against female students Hesse and Haddock?

R. Yes

4. Did you engage, or intended to engage, in any sexual harassment, sexual assault, sexual abuse, or anything sexual against female students Hesse or Haddock?

R. No

5. As a Teacher, did you ever engage or intended to engage in anything sexual against any student, ever?

R. No

6. Did you repeatedly tell female students Hesse and Haddock to stop sleeping in class and remove their winter-jackets they had placed over their heads on 11-19-99?

R. Yes.

7. Did you ever allow any student to leave any school-campus to go anywhere?

R. No.

8. Did Defendant Bill Evans arbitrarily fire you from your job in 1995 without proper procedure based on the false statements of three well-known lying students, and then blacklisted you?

R. Yes.



PRIVILEGED AND CONFIDENTIAL

23 March 2005

On March 22, 2005, Alexander Pastene was administered a polygraph examination to ascertain whether or not he engaged in inappropriate sexual misconduct involving students of Beaufort High School.

Before being administered a polygraph examination, Mr. Pastene read and signed a statement assuring all concerned that the examination was being taken voluntarily.

The Polygraph Zone Comparison Technique employing exclusive earlier-in-life control questions and a numerical scoring system of chart analysis as recommended by national standards was utilized throughout the examination, using equipment which indicated and recorded on a moving chart relative changes in blood pressure, rate and strength of pulse beat, electro-dermal response, thoracic and abdominal breathing patterns.

During the pre-test interview, Mr. Pastene advised that during November 1999, he was working at Beaufort High School as a substitute teacher. During this time frame, two female students (Haddock and Hesse) reported that he made inappropriate sexual comments to them during the class period. Mr. Pastene denied ever making any inappropriate comments to any student while working in the Beaufort County School District.

After a through review of the investigation the following relevant questions quantified and were used for determination:

R5) Did you ever engage in any sexual activity with any student in the Beaufort County School System?


R7) Between 1994 & 1999, did you ever engage in any sexual activity with any student in the Beaufort County School System?

R10) Have you ever violated any Beaufort County School Regulations while working in the Beaufort County School District?

Mr. Pastene answered in the negative/no to Relevant Questions R5, R7 and R10.

CONCLUSION:

In the opinion of the undersigned, Alexander Pastene's polygraph charts showed no strong or consistent unresolved responses to aforementioned relevant questions. Careful analysis and qualification of Alexander Pastene's polygraph charts revealed a total score of +12 for 3 charts. A minimum score of +3 is required before a definite truthful conclusion can be rendered. It is therefore the opinion of the undersigned that Alexander Pastene was Truthful when he gave the above indicated answers to aforementioned relevant questions R5, R7 and R10.



Toby McSwain, Licensed Polygraph Examiner
President, Palmetto Polygraph, Inc.

EXHIBIT 2
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FLOW CHART FOR HEARING OF MARCH 11-12 10am BC Master in Equity

10-24-11 COMPLAINT Clocked October 24-11	2-24-12 ANSWER + COUNTERCLAIM After about 5 months	3-1-12 MOTION to DISQUALIFY Finger and RESPONSE to FINGER COUNTERCLAIM Plus AMDT & Addendum	5-17-12 HEARING TO DISQUALIFY After about 2 months later	
5-17-12 – Form 4 ORDER To DISQUALIFY <u>DENIED</u> (and <u>Continuance to Respond</u> to Interrogat also denied). Nothing to do with my Motion To Continue of 7-11-12 .	5-23-12 MOTION TO RECONSIDER ORDER of 5-17-12	7-10-12 HEARING TO RE-CONSIDER THE ORDER OF 5-17-12	No Order ENSUED AFTER 5-17-12 see(*)	
7-11-12 MY MOTION TO CONTINUE Until Supreme Court Ruled. (This Motion had nothing to do with the Cont of 3-1-12)	10-1-12 SUPREME CT. DISMISSAL October 1 st , 2012 (No action for 4 mo.)	10-16-12 HEARING Motion 7-11-12 Court Room 2-October 16, 2012. Assessed \$800 penalty for filing 2 motions for Continuance-Untrue	10-19-12 ORDER 10-19-12 IN ERROR (Only 1 Motion to Continue)	
10-31-12 Response to Order of 10-19-12	11-12-12 Letter to Dukes on Order of 10-19-12	11-13-12 Motion to Reconsider Order of 10-19-12	12-4-12 Invalid Order (Issued before hearing)	3-13-13 HEARING To hear 2 motion 11-13-12 & 12-14-12

()It was Judge Dukes who said during the hearing that he would abide by whatever the Supreme Court decided...and he did wait from July 2012 until October 16,12 to set the hearing to my Motion for Continue, which is consistent with his statement to wait.*

Besides, I never filed a second motion to reconsider on a Continuance. Where is it? I never paid for it either.

A previous motion to Continue to Respond of 3-1-12 was to complete or expand what I had already responded (I denied every allegation by Finger's Counterclaim and demanded strict proof, which he never did...see #12, # 13 and #14 of my Motion to Disqualify Finger of 3-1-12). This Motion to Continue to Respond to Fingers Interrogatories (which I had responded already as supra anyway) has nothing to do with my Motion to Continue of 7-11-12.

Exhibit 1

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THE ORDERS OF OCTOBER 18, and DECEMBER 4, 2012.

This instant Orders contain several inaccuracies that make them both invalid as follows:

1. As regards the historical review of the case in second paragraph, page 1 of 3, of the Order October 18, 2012, it is stated that, the Plaintiff's Motion to Reconsider the Order of March 1 [not 4] 2012, was denied on July 10, 2012; **this is incorrect;** that Motion to Continue (attached to my Adendum of 3-1-12, was to further Respond to Finger's Counterclaim, which I had already responded, anyway (see #12, # and #14 of my Response).

2. The Order of December 4, 2012, indicates that the Order of October 18, 2012 (prepared by the Terry Finger) gave the Plaintiff thirty (30) days to pay the Attorney Finger the sum of \$825, on or by November 17, 2012. Finger had 10 days from November 17, 2012 to file the said Motion to Dismiss, but failed to do so within the ten (10) days (by Dec 16 or 17, 2012) required by the SCRCPC and thus, the motion to dismiss the case in the Order of December 4, 2012 should be invalidated. Please note that Attorney Finger had one of his employees, a Ms. Carstensen, certify his "Affidavit" dated 11-28-12, but he did NOT clocked it, and filed attached to the Order of December 4, 2012, clocked December 7, 2012. It is assumed that attorney Finger may have ordered his employee to back-date his affidavit; otherwise why didn't he clock it?

3. As regards the statement in Order of October 18, 2012, page 1 of 3, indicating that the Plaintiff filed "an additional" Motion to Continue the Disqualification of Terry Finger, quote: *in essence asking the Court to reconsider a second time the disqualification Motion, is incorrect,* because there was no two motions to re-consider the disqualification; there was only one Motion to Continue the disqualification and was dated 7-11-12. Moreover, as regards the third paragraph of Order of October 18, 2012, page 1 of 3, indicating that Plaintiff asked the Court to reconsider the prior disqualification, The Plaintiff did not ask the Court to Reconsider, and he didn't bring any documents to the October 16, 2012 hearing because it was set hear his Motion to Continue of 7-11-12, which was moot.

4. The Plaintiff's Motion to Disqualify Finger was denied On May 21, 2012, and he filed a Motion to Reconsider on May 23, 2012. A hearing was set for July 10, 2012 (*where Finger threatened the Plaintiff to get himself a good attorney if he filed a complaint against him before the SC Supreme Court*) **but no Order was issued because Judge Dukes stated that he would abide by what the Supreme Court decided, and NO ORDER WAS ISSUED on July 10, 2012.** Indeed, Judge Dukes waited almost 4 months to issue his Order until the hearing of October 16, 2012, to hear the Plaintiff's Motion to Continue of July 11, 2012 (which had become moot). It is correct that the decision of the SC Supreme Court Commission of Judicial Conduct does not stay, alter, or modify any court proceedings, but it was Judge Dukes' decision to delay the issuing of his Order until the SC Supreme Court decided on the Complaint, which was issued on

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October 1st, 2012. In other words, there was nothing to prepare for a hearing that had become moot because the continuance became moot, so, on October 18, 12, Finger prepared an Order that was signed by Dukes on October 18 and clocked October 19, 2012, which the Plaintiff challenged with a Motion for Reconsideration on 11-13-12.

5. As regards third paragraph in page 2 of 3, of the Order of October 18, 2012, in which Finger requested sanctions against the Plaintiff, quote: ***for having to appear to argue a Motion that was non-meritorious on its face value due to the procedural history of the disqualification issue, is incorrect*** because the Plaintiff followed proper procedure and his Motions were apropos and meritorious. Please note that it is customary for Terry Finger to invoke frivolity and trivializing opponents, as he had done previously against the Plaintiff.

None of the sanctions should apply because:

- a). There was only one Motion to Continue, which became moot after the Supreme Ct decision of Oct 1, 2012.
- b). There was nothing to prepare for that hearing, as stated by Finger, much less invest 3 hours of legal time and appearing (travel) @ \$275/hr. x 3= \$825, which Finger based on: difficulty of legal services; time and labor; professional standing of counsel; contingency of compensation; customary fees; beneficial results. (Finger had another client in the same court room following our hearing on Oct. 16, 2012, so, where is exclusive the travel, time and labor come from?
- c). The Plaintiff's Motion to Continue of 7-11-12, was filed in accordance to Court Procedure and had merit. Whereas, contrary to the Order, it was this court that did not follow proper procedure.
- d). Finger failed to file on time (within 10 days) his Motion to Dismiss the Complaint against the defendants. He should have filed his Motion on or before November 26, 2012, but filed beyond that date. Actually, he had his Secretary, Ms, Carstensen, certify his Affidavit on November 28, 2012. (Thirty days from October 18 is November 17; and ten days from Nov 17 = November 27, 2012.) Besides Finger should have clocked his Affidavit, instead of having one of his employees certified it. There is reason to believe that he made his employee certify the affidavit with a different date. Incidentally, the counts of 30 days and 10 days run consecutively and not interrupted by weekends.

6. The Plaintiff intended to Appeal pending hearing with Judge Mullen, but the hearing never materialized because she was absent and Judge McDonald **continued it and is now pending**, because she could not rule on someone else's ruling, as Plaintiff stated on his Response to Judge Dukes of December 31, 2012, clocked November 2, 2012. Irrespective, the Plaintiff reserves his right ask Judge Dukes to excuse himself, request a Referee, or file an Appeal before Ct Appeals.