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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEE COUNTY  
COURT OF COMMON PLEAS

S. Bryan Doby, Master-In-Equity

Case No. 2009-31-0131

RECEIVED  
SEP 06 2016  
SC Court of Appeals

MAXIE LEE THOMAS, JR. AKA  
MAXIE LEE THOMAS, DECEASED, and all  
Other heirs at law and/or distributes of Maxie  
Lee Thomas, Jr., a/k/a Maxie Lee Thomas, deceased  
His heirs, personal representatives, executors,  
Administrators, successors and assigns, and  
Any spouses if any he has, and all persons  
Entitled to claim under or through him or any  
Right, title, estate, interest in or lien upon the  
Real estate described in the Complaint  
Herein; also any persons who may be in the  
Military service of the United States of  
America, being a class designated as John  
Doe; and any unknown minors or persons  
Under a disability being a class designated as  
Richard Roe, Laura Ann Toney, and  
Brittany Nicole Thomas.

Appellants,

vs.

United States of America, acting  
through the Farmers Home  
Administration, United States  
Department of Agriculture

Respondents.

PETITION FOR INJUNCTION

Pursuant to Rule 240 , the Appellant respectfully request an Injunction to Stay

**the sale of the house in this litigation for the following:**

1. The Appellant, who is the sister and Personal Representative of the estate of her deceased brother, Maxie Lee Thomas, Jr., was denied due process in defending this case during the foreclosure hearing dated April 13, 2016. The Appellant was having serious medical problems and notified the courts with a doctor's excuse from the hospital before the hearing. Judge Doby, Master In Equity, denied her request. The Exparte Hearing went forward without the Defendant present. The Appellant collapsed in court and the EMS was called at the beginning of the hearing on June 22, 2016, and the Appellant was unable to present her side. Judge Doby wrote in his Order that the Appellant collapsed at the conclusion of the hearing. The transcript will show that Judge Doby was not honest in his Order. The Appellant collapsed in the middle of the hearing. The EMS was called and the hearing was adjourned. The Appellant did not get an opportunity to present her case. **The Rule 11 filed by the Petitioner was never addressed during this hearing. Judge Doby ruled for the foreclosure and sale of the house in this litigation. In his Order for Foreclosure and Sale he stated in his Order that the hearing held on June 22, 2016, was concluded. The transcript will prove that Judge Doby committed perjury in his order. The Petitioner was denied her due process in this case.** Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his/her case. Rule 60(b) (3) of the South Carolina Rules of Civil Procedure allows a party to make a motion within one year (or as soon as reasonable) to set aside a judgment based on fraud. Whether a court will grant a new trial depends on whether the fraud is "intrinsic" or "extrinsic." South Carolina's courts may set aside a judgment if the fraud is considered extrinsic but will not void the judgment if the fraud is intrinsic. Intrinsic fraud is defined as "fraud which misleads a court in

determining issues and induces the court to find for the party perpetrating the fraud. The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic, fraud." Stated another way, intrinsic fraud is fraud that was presented to the court and considered at trial. Unfortunately, as unfair as it may seem, there is little to be done under these circumstances. **Essentially, the court does not grant relief for intrinsic fraud based on a theory that this type of deception should be discovered during the lawsuit itself and that if the court allows relief for intrinsic fraud, then the stability of all judgments may be undermined.**

Fraud upon the court is "fraud which . . . subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Evans v. Gunter, S.E.2d 44, 46 (Ct. App. 1988) (emphasis added) (quoting Lightsey & Flanagan, supra, ). It has also been defined as "fraud that does, or at least attempts to, defile the court itself . . . ." Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). Historically, after the period to claim relief under Rule 60(b)(1) through (3), SCRCP, has expired, courts have required a showing of extrinsic fraud to vacate a judgment. See Hagy v. Pruitt, 339 S.C. S.E.2d 714, 717 (2000); Evans, 294 S.C. at 529, 366 S.E.2d at 46.

South Carolina law maintains a distinction between intrinsic and extrinsic fraud. Mr. G v. Mrs. G, 320 S.C. S.E.2d (Ct. App. 1995) (Hearn, J. dissenting). "Intrinsic fraud refers to fraud presented and considered in the judgment assailed, including perjury and forged documents presented at trial." Evans, 294 S.C. at 529, 366 S.E.2d at 46. It is fraud which "goes to the merits of the prior proceeding which the moving party should have guarded against at the time." City of San Francisco v. Cartagena, 41 Cal. (Cal. Ct. App. 1995), quoted with approval

in Mr. G, S.E.2d at 103. By contrast, extrinsic fraud "refers to frauds collateral or external to the matter tried such as bribery or other misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard." Lightsey & Flanagan supra, at 486; see also Hilton Head Ctr., Inc. v. Pub. Serv. Comm'n, S.E.2d 176, 177 (1987) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."). The South Carolina Supreme Court states: Our Court has not previously defined fraud upon the court in connection with setting aside a final judgment. In Evans v. Gunter, S.C. S.E.2d (Ct. App. 1988), the Court of Appeals noted one commentator described "fraud upon the court" as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." (citing H. Lightsey, J. Flanagan, South Carolina Civil Procedure, (2nd ed. 1985).

Other jurisdictions describe fraud upon the court as follows:

Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court. Rozier v. Ford Motor Co., F.2d 1332, 1338 (5<sup>th</sup> Cir. 1978) citing United States v. Int'l Telephone & Telegraph Corp., F.Supp. 22, 29 (D. Conn. 1972) (internal citations omitted). Fraud upon the court is a "serious allegation . . . involving 'corruption of the judicial process itself.'" Cleveland Demolition Co., Inc. v. Azcon Scrap Corp., supra F.2d at quoting In re Whitney-Forbes, F.2d (7<sup>th</sup> Cir. 1985).. . . '[F]raud on the court,' whatever else it

embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests of finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing of conscious wrongdoing - - what can properly be characterized as a deliberate scheme to defraud - - before relief from a final judgment is appropriate. . . . Thus, when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court.'United States v. Buck, 281 F.3d 1136, 1342 (10<sup>th</sup> Cir. 2002) quoting Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259, 1267 (10<sup>th</sup> Cir. 1995). **EXHIBITS 1 and 2/TRANSCRIPT FROM HEARING ON JUNE 22, 2016 AND ORDER ON MOTION TO RECUSE.**

2. The Appellant file an Interlocutory Appeal on August 24, 2016. Judge Doby Ordered the Foreclosure and Sale of the house in this litigation for October 3, 2016. He stated that he based his decision on the hearing from April 13, 2016, which was an Exparte Hearing where the Appellant was not in attendance. **The sale of this house will cause irreparable harm in which the Appellant will never be able to recover. EXHIBIT 3/TRANSCRIPT FROM HEARING ON APRIL 13, 2016.**

3. The Appellant later discovered that the Law Office of Tyler, Peace, Jackson and Silver changed attorneys without an Order from the Court. They then filed an Amended Complaint. This Amended complaint was **NEVER** mentioned in any Motions or documents submitted to the court by Tyler, Peace, Silver, Cassell, and Jackson. Mr. Gary Rish is the Attorney of Record who filed the Complaint. The Appellant then notified the Court. Judge Doby totally ignored my Motion and continued to rule in the favor of USDA. Judge Doby never allowed me

to present my defense. The Appellant also feels that Judge Doby had a duty to report this misconduct instead of supporting it. South Carolina makes it clear the procedures for withdrawal of representation. **EXHIBITS 4 and 5 /COMPLAINT FILED BY MR. GARY RISH AND AMENDED COMPLAINT FILED BY TYLER, JACKSON, PEACE, CASSELL AND SILVER.**

**"Fraud upon the court" makes void the orders and judgments of court are void, of no legal force or effect.**

**UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.**

**South Carolina Bar Ethics Advisory Opinion 08-01**

**SC Rules of Professional Conduct: 1.2; 1.16**

Date: March 2008

Facts: Attorney undertakes a federal litigation case pursuant to fee agreement that requires the client to maintain a minimum retainer amount. Client's retainer amount falls below this minimum, and lawyer demands that client replenish retainer. However, client is unable to replenish retainer or pay outstanding bill. Attorney and client execute written agreement discharging attorney from representation of client. Attorney notifies all opposing counsel and circulates a consent order.

Attorney submits consent order to judge who advises that he will only relieve attorney upon

motion and hearing. Client is served with discovery requests, and his deposition is noticed. The motion to be relieved as counsel has been filed, and no hearing date has been set.

Question: What is attorney's obligation to represent client in responding to discovery requests and depositions and hearings?

### Summary

Rule 1.16(c), South Carolina Rules of Professional Conduct (SCRPC), requires a lawyer to have permission of the appropriate tribunal before terminating representation. Until such relief is granted, the lawyer is obligated to provide competent representation.

### Opinion

Rule 1.16(c), SCRPC, provides that a lawyer obtain permission of the appropriate tribunal before terminating representation:

A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

In *Ex Parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (2000), the South Carolina Supreme Court held that a court order is required to relieve a lawyer as counsel of record pursuant to Rule 11(b), South Carolina Rules of Civil Procedure (SCRCivP). See also *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163 (1996). Thus, the lawyer may not withdraw from representation until given permission by the court. While the Committee does not address questions of law, Federal Local Rule 83.I.07 is consistent with Rule 11(b), SCRCivP, and requires that an attorney obtain leave of the court before his or her name may be stricken from the record.

Notwithstanding the doctrines of federal pre-emption and abstention, the Committee advises that the dictates of *Ex Parte Strom* control the lawyer's obligation to the client.

**Accordingly, the scope and allocation of authority contemplated by Rule 1.2, SCRPC, are subject to Rule 1.16(c) that requires permission of the appropriate tribunal before terminating representation. It is the opinion of the Committee that the lawyer must continue to provide competent representation to the client until relief is given by the court. To the extent possible, the lawyer may request extensions of time for responses to discovery requests or postpone depositions. However, under these circumstances, the lawyer is not relieved of his or her obligation to the client until permission is granted by the court.**

4. The Defendant requested the recusal of Judge Doby with (2) Motions because of his Conflict of Interest. Judge Doby is Lee County Master In Equity and also a partner with the Jennings Law Firm that has represented the Appellant and her family for over (40) years in several cases. Judge Doby refused to recuse himself. **EXHIBIT 6/MOTIONS TO RECUSE** The Appellant filed a complaint on Judge Doby with the Commission on Judicial Conduct for his Conflict of Interest. The investigation has been ongoing for several weeks, but Judge Doby continues to rule in the case for USDA. In (1) case where I was litigating a complaint about a neighbor moving a trailer on land that belongs to me, Judge Doby recused himself, but in the case with the USDA, Judge Doby refuses to recuse himself even when he knew there is a pending investigation on him for Conflict of Interest. **EXHIBIT 7**

6. USDA did not provide a "**Letter of Acceleration**" before foreclosure. I feel that Judge Doby retaliated against me for filing a complaint on him for Conflict of Interest. As mentioned, the investigation is still ongoing. Judge Doby definitely should have recused himself to

prevent any bias decisions. Mr. Robert Jennings, former Master In Equity, and former partner with the Jennings and Jennings Law Firm would always recuse himself. **EXHIBIT 8**

“According to Congress, U.S. Supreme Court case law and South Carolina Canons of Judicial Ethics, a judge must bow out of hearing any case in which his or her impartiality might reasonably be questioned. The South Carolina Canons of Judicial Conduct say that judges must avoid all impropriety and appearance of Impropriety.” “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.”

**According to 28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge.**

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

**(b)**He shall also disqualify himself in the following circumstances:

**(1)**Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

**(2)**Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

**(3)** Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion

concerning the merits of the particular case in controversy;

**(4)** He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

According to Canon 3 (E)(1a) of the Code of Professional Ethics,

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of disputed evidentiary facts concerning the proceeding;**

**Also, according to Rule 1.9 Duties to Former Clients**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a **substantially** related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives **informed consent, confirmed in writing.**

(b) A lawyer shall not **knowingly** represent a person in the same or a substantially related matter in which a **firm** with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives **informed consent, confirmed in writing.**

(c) A lawyer who has formerly represented a client in a matter or whose present or former **firm** has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known or

**(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.**

Courts more frequently encounter claims that an interlocutory order is immediately appealable because it affects a **substantial right**. This provision is narrowly construed to cover only those cases where the substantial right at issue cannot be later vindicated on appeal after the entire case is over. See, e.g., *Thornton v. South Carolina Elec. & Gas corp.*, S.C. S.E. 2d (S.C. App. 2011).

As one example, orders concerning the mode of trial affect a substantial right, cannot be vindicated after final judgment, and are thus immediately appealable. *Salmonsens v. CGD, Inc.*, S.C. S.E.2d (2008)(order revising class action from opt-out to opt-in class immediately appealable as an order affecting the mode of trial); *Hagood v. Sommerville*, S.C. S.E.2d (2005)(order granting a motion to disqualify an attorney affects the mode of trial and is

immediately appealable).

Also unlike most other appeals, an order affecting the mode of trial must be immediately appealed or the right to appeal is lost. In other cases, a party may immediately appeal an order affecting a substantial right or wait to raise the issue on appeal from the final judgment. Price v. Peachtree Elec. Services, Inc., S.C. S.E.2d (S.C.App. 2011). S.C. Code of Law Ann. 14-3-330 also allows immediate appeals from orders granting, continuing, modifying, or refusing an injunction. Unless ordered by the trial court, such an appeal does not stay the case or prevent the case from moving forward on the merits. Poynter Inv. Inc. v. Century Builders of Piedmont, Inc., S.C. S.E.2d 15 (2010).

**The Appellant was denied Due Process.** Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. Thus, where a litigant had the benefit of a full and fair trial in the state courts, and his rights are measured, not by laws made to affect him individually, but by general provisions of law applicable to all those in like condition, he is not deprived of property without due process of law, even if he can be deprived of his property by an adverse result. Marchant v. Pennsylvania R.R. (1894).

Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. Carey v. Piphus, (1978).

“Procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.” Mathew v. Eldridge (1976). Thus the required elements of due process are those that minimize substantively unfair or mistaken deprivations by enabling persons to contest the basis upon which a State proposes to deprive them of

protected interests *Fuentes v. Shevin*, (1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. *Carey v. Phipps*, (1978); *Marshall v. Jerrico, Inc.* (1980); *Nelson v. Adams*, 120 S. Ct. 1579 (2000)(amendment of judgment to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity of dispute).

**Some form of hearing is required before an individual is finally deprived of a property interest.** *Armstrong v. Manzo*, (1965); *Robinson v. Hanrahan*, (1974); *Greene v. Lindsey*, (1982) This right is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions.

The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. *Fuentes v. Shevin*, (1972). Thus, the notice of hearing and the opportunity to be heard must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo* (1965).

Just as in criminal and quasi-criminal cases, and impartial decision maker is an essential right in civil proceedings as well. *Tumey v. Ohio*, (1927); *In re Murchison*, (1955). *Goldberg v. Kelly*, (1970). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico* (1980) *Schweiker v. McClure*, (1982). Thus a showing of bias or of strong implications of bias was deemed made where a state optometry board, made up of only private practitioners, was

proceeding against other licensed optometrists for unprofessional conduct because they were employed by corporations. Since success in the board's effort would redound to the benefit of private practitioners, the Court thought the interest of the board members to be sufficient to disqualify them. *Gibson v. Berryhill*, (1973). Or, the conduct of deportation hearings by a person who while he had not investigated the case heard, was also an investigator who must judge the results of others' investigations just as one of them would some day judge his raised a substantial problem which was resolved through statutory construction. *Wong Yang Sung v. McGrath*, (1950). *Handi v. Rumsfeld* 03-6696, Supreme Court June 28, 2004; ("Procedural due process rules are meant to protect persons not from the deprivation but from the mistaken or unjustified deprivation of life, liberty, or property") see also *id* at (noting the importance to organized society that procedural due process be observed emphasizing that the right to procedural due process is absolute in the sense that it does not depend upon the merits of a claimant substantive assertions"). In *Boddie v. Connecticut* (1971)" These due process decisions, representing over a hundred years of effort by this court to give concrete embodiment to this concept, provide, complete vindication for appellant's contentions. In particular, precedent has firmly embedded in our due process jurisprudence important principles upon whose application we rest our decisions in the case before us Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims on right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "Wherever one is assailed in his person or his property, there he may defend." *Windsonr v. Mc Veigh* (1876); *Baldwin v. Hale* 1Wall (1864); *Hover v. Elliott* (1897). "there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity

for hearing appropriate to the nature of the case."Id.

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. Exactly what procedures are needed to satisfy due process, however, will vary depending on the circumstances and subject matter involved. One of the basic criteria used to establish if due process is satisfied is whether such procedure was historically required in like circumstance.

***Relevance of Historical Use.***—The requirements of due process are determined in part by an examination of the settled usages and modes of proceedings of the common and statutory law of England during pre-colonial times and in the early years of this country. In other words, the antiquity of a legal procedure is a factor weighing in its favor. However, it does not follow that a procedure settled in English law and adopted in this country is, or remains, an essential element of due process of law. If that were so, the procedure of the first half of the seventeenth century would be "fastened upon American jurisprudence like a strait jacket, only to be unloosed by constitutional amendment."Fortunately, the States are not tied down by any provision of the Constitution to the practice and procedure which existed at the common law, but may avail themselves of the wisdom gathered by the experience of the country to make changes deemed to be necessary.

A passing reference by Justice O'Connor in a concurring opinion in *Glucksberg* and its companion case *Vacco v. Quill* may, however, portend a liberty interest in seeking pain relief, or "palliative" care. *Glucksberg and Vacco*, (Justice O'Connor, concurring).

Thus, where a litigant had the benefit of a full and fair trial in the state courts, and his rights are measured, not by laws made to affect him individually, but by general provisions of law applicable to all those in like condition, he is not deprived of property without due process of law, even if he can be regarded as deprived of his property by an adverse result. *Marchant v.*

Pennsylvania R.R.,(1894).

Hagar v. Reclamation Dist., (1884). "Due process of law is [process which], following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and whenever necessary to the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. Any legal proceeding enforced by public authority, whether sanctioned by age or custom or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice, must be held to be due process of law." *Id.* At ; *Accord*, *Hurtado v. California*, (1884).

*Twining v. New Jersey*, (1908); *Brown v. New Jersey*,(1899). "A process of law, which is not otherwise forbidden, must be taken to be due process of law, if it can show the sanction of settled usage both in England and this country." *Hurtado v. California*, 110 U.S.

*Twining*, 211 U.S. at 101.687 *Hurtado v. California*, (1884); *Brown v. New Jersey*,(1899); *Anderson Nat'l Bank v. Lueckett*, (1944).

***The Requirements of Due Process.***—Although due process tolerates variances in procedure "appropriate to the nature of the case," it is nonetheless possible to identify its core goals and requirements. First, "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.

Ballard v. Hunter, (1907); Palmer v. McMahon, (1890).

For instance, proceedings to raise revenue by levying and collecting taxes are not necessarily judicial proceedings, yet their validity is not thereby impaired. Palmer v. McMahon, (1890) Railroad Comm'n v. Rowan & Nichols Oil Co., (1941) (oil field proration order). See also Railroad Comm'n v. Rowan & Nichols Oil Co., (1940) (courts should not second-guess regulatory commissions in evaluating expert testimony) See, e.g., Moore v. Johnson, 582 F.2d 1228, 1232 (9th Cir. 1978) (upholding the preclusion of judicial review of decisions of the Veterans Administration regarding veteran's benefits).

Mullane v. Central Hanover Trust Co., (1950). Carey v. Piphus, (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." Mathews v. Eldridge, (1976) Fuentes v. Shevin, 1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. Carey v. Piphus, (1978); Marshall v. Jerrico, Inc., (1980); Nelson v. Adams, S. Ct. 1579 (2000) (amendment of judgement to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity to dispute).

(1) **Notice.** "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." This may include an obligation, upon learning that an attempt at notice has failed, to take "reasonable follow up measures" that may be available. The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it. Such notice,

however, need not describe the legal procedures necessary to protect one's interest if such procedures are otherwise set out in published, generally available public sources.

(2) **Hearing.** "[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest." This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment ..." Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Mullane v. Central Hanover Trust Co.*, (1950). See also *Richards v. Jefferson County*, (1996) (res judicata may not apply where taxpayer who challenged a county's occupation tax was not informed of prior case and where taxpayer interests were not adequately protected).

*Jones v. Flowers*, (2006) (state's certified letter, intended to notify a property owner that his property would be sold unless he satisfied a tax delinquency, was returned by the post office marked "unclaimed"; the state should have taken additional reasonable steps to notify the property owner, as it would have been practicable for it to have done so.) *Goldberg v. Kelly*, (1970). *Armstrong v. Manzo*, 1965); *Robinson v. Hanrahan*, 1974); *Greene v. Lindsey*, (1982). *City of West Covina v. Perkins*, (1999). *Mathews v. Eldridge*, 1976). "Parties whose rights are to be affected are entitled to be heard." *Baldwin v. Hale*, 1863). *Fuentes v. Shevin*, (1972). See *Joint Anti-Fascist Refugee Committee v. McGrath*, (1951) (Justice Frankfurter concurring). *Armstrong v. Manzo*, (1965)

(3) **Impartial Tribunal.** Just as in criminal and quasi-criminal cases, an impartial decision maker is an essential right in civil proceedings as well. "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or

distorted conception of the facts or the law... At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." Thus, a showing of bias or of strong implications of bias was deemed made where a state optometry board, made up of only private practitioners, was proceeding against other licensed optometrists for unprofessional conduct because they were employed by corporations. Since success in the board's effort would redound to the personal benefit of private practitioners, the Court thought the interest of the board members to be sufficient to disqualify them. There is, however, a "presumption of honesty and integrity in those serving as adjudicators," so that the burden is on the objecting party to show a conflict of interest or some other specific reason for disqualification of a specific officer or for disapproval of the system. Thus, combining functions within an agency, such as by allowing members of a State Medical Examining Board to both investigate and adjudicate a physician's suspension, may raise substantial concerns, but does not by itself establish a violation of due process.<sup>709</sup> The Court has also held that the official or personal stake that school board members had in a decision to fire teachers who had engaged in a strike against the school system in violation of state law was not such so as to disqualify them. Sometimes, to ensure an impartial tribunal, the Due Process Clause requires a judge to recuse himself from a case. In *Caperton v. A. T. Massey Coal Co., Inc.*, the Court noted that "most matters relating to judicial disqualification [do] not rise to a constitutional level," and that "matters of kinship, personal bias, state policy, [and] remoteness of interest, would seem generally to be matters merely of legislative discretion." The Court added, however, that "[t]he early and leading case on the subject" had "concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has 'a direct,

personal, substantial, pecuniary interest' in a case." In addition, although "[p]ersonal bias or prejudice 'alone would not be sufficient basis for imposing a constitutional requirement under the Due Process Clause,'" there "are circumstances 'in which experience teaches that the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.'" These circumstances include "where a judge had a financial interest in the outcome of a case" or "a conflict arising from his participation in an earlier proceeding." In such cases, "[t]he inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" In *Caperton*, a company appealed a jury verdict of \$50 million, and its chairman spent \$3 million to elect a justice to the Supreme Court of Appeals of West Virginia at a time when "[i]t was reasonably foreseeable . . . that the pending case would be before the newly elected justice."<sup>35</sup> This \$3 million was more than the total amount spent by all other supporters of the justice and three times the amount spent by the justice's own committee. The justice was elected, declined to recuse himself, and joined a 3-to-2 decision overturning the jury verdict. The Supreme Court, in a 5-to-4 opinion written by Justice Kennedy, "conclude[d] that there is a serious risk of actual bias — based on objective and reasonable perceptions — when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent."<sup>36</sup> *Tumey v. Ohio*, (1927)); *In re Murchison*, (1955). *Goldberg v. Kelly*, (1970). *Marshall v. Jerrico* (1980); *Schweiker v. McClure*, (1982). *Gibson v. Berryhill*, (1973). Or, the conduct of deportation hearings by a person who, while he had not investigated the case heard, was also an investigator who must judge the results of others' investigations just as one of them would someday judge his, raised a substantial problem

which was resolved through statutory construction). *Wong Yang Sung v. McGrath*, (1950). *Schweiker v. McClure*,(1982); *Withrow v. Larkin*,(1975); *United States v. Morgan*, (1941).*Withrow v. Larkin*, (1975). Where an administrative officer is acting in a prosecutorial, rather than judicial or quasi-judicial role, an even lesser standard of impartiality applies. *Marshall v. Jerrico*, (1980) (regional administrator assessing fines for child labor violations, with penalties going into fund to reimburse cost of system of enforcing child labor laws). But "traditions of prosecutorial discretion do not immunize from judicial scrutiny cases in which enforcement decisions of an administrator were motivated by improper factors or were otherwise contrary to law." *Id.* at 249.*Hortonville Joint School Dist. v. Hortonville Educ. Ass'n*, (1976). *Compare Arnett v. Kennedyn*.5 (1974) (Justice Powell), *with id.* at 196-99 (Justice White), and 216 (Justice Marshall).S. Ct. 2252, 2259 (2009) (citations omitted).S. Ct. at 2259, quoting *Tumey v. Ohio*,(1927).S. Ct. at 2259 (citations omitted).33129 S. Ct. at 2259-60, 2261.34129 S. Ct. at 2262 (citations omitted).35129 S. Ct. at 2264.36129 S. Ct. at 2263-64. Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, dissented, asserting that "a 'probability of bias' cannot be defined in any limited way," "provides no guidance to judges and litigants about when recusal will be constitutionally required," and "will inevitably lead to an increase in allegations that judges are biased, however groundless those charges may be." *Id.* at 2267. The majority countered that "[t]he facts now before us are extreme in any measure." *Id.* At 2265.

**(4) Confrontation and Cross-Examination.** "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy," the individual's right

to show that it is untrue depends on the rights of confrontation and cross-examination. "This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny."

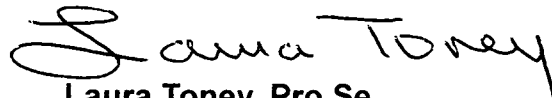
**(5) Discovery.** The Court has never directly confronted this issue, but in one case it did observe in *dictum* that "where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue." Some federal agencies have adopted discovery rules modeled on the Federal Rules of Civil Procedure, and the Administrative Conference has recommended that all do so. There appear to be no cases, however, holding they must, and there is some authority that they cannot absent congressional authorization.

**(6) Decision on the Record.** While this issue arises principally in the administrative law area, it is applicable generally. "[T]he decision maker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing... To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on . . . though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law." *Goldberg v. Kelly*, (1970). *See also* *CC v. Louisville & Nashville R.R.*, (1913). *Cf.* § 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d). *Greene v. McElroy*, (1959).

**For the above reasons, the Appellant is respectfully requesting that an injunction is ordered in this case until a decision is made from the South Carolina Court of Appeals to the merits of this case. The sale of this property will cause the Petitioner**

irreparable harm.

September 6, 2016

  
Laura Toney, Pro Se

P.O. Box 722

Bishopville, SC 29010

**CERTIFICATE OF SERVICE**

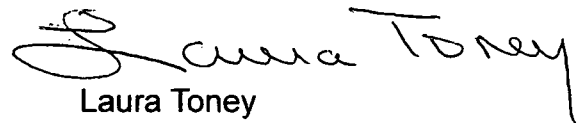
**This is to certify that the Petitioner mailed a copy of the Petition For Injunction to the following addressed as follows on September 6, 2016, via United Stated Postal Service addressed as follows:**

Tyler, Cassell, Jackson, Peace & Silver L.L.P.  
P.O. Box 11656  
Columbia, SC 29211-1656

The Honorable Bryan Doby  
P.O. Box 106  
Bishopville, SC 29010-0106

Lee County Clerk of Court  
P.O. Box 387  
Bishopville, SC 29010

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SEP 06 2016  
SC Court of Appeals



Laura Toney  
P.O. Box 722  
Bishopville, SC 29010

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

**APPEAL FROM LEE COUNTY  
COURT OF COMMON PLEAS**

**S. Bryan Doby, Master-In-Equity**

**Case No. 2009-31-0131**

**RECEIVED**  
SEP 06 2016  
SC Court of Appeals

**MAXIE LEE THOMAS, JR. AKA  
MAXIE LEE THOMAS, DECEASED, and all  
Other heirs at law and/or distributes of Maxie  
Lee Thomas, Jr.,a/k/a Maxie Lee Thomas, deceased  
His heirs, personal representatives, executors,  
Administrators, successors and assigns, and  
Any spouses if any he has, and all persons  
Entitled to claim under or through him or any  
Right, title, estate, interest in or lien upon the  
Real estate described in the Complaint  
Herein; also any persons who may be in the  
Military service of the United States of  
America, being a class designated as John  
Doe; and any unknown minors or persons  
Under a disability being a class designated as  
Richard Roe, Laura Ann Toney, and  
Brittany Nicole Thomas.**

**Appellants,**

**vs.**

**United States of America,acting  
through the Farmers Home  
Administration, United States  
Department of Agriculture**

**Respondents.**

## **SUPPLEMENTAL PETITION FOR INJUNCTION**

**The petitioner respectfully requests that the Court will accept this as a Supplemental to the Petition For Injunction.**

- 1. The Petitioner later discovered through the transcript from the Exparte Hearing held on April 13, 2016, that USDA committed fraud on the Court and submitted false evidence to the Court. As stated in the Petition For Injunction, the Petitioner notified the Court before the hearing that she was sick and was in the emergency room. The transcript from the hearing made accusations about me driving to Florence, South Carolina when I live in Bishopville, South Carolina to the emergency room. I did drive to Florence, South Carolina to the emergency room, but it was for my brother who was in an accident who suffered permanent brain damage. While in the emergency room with him, I became ill and had to be placed in a room to be examined. I was given an excuse from the emergency room representative that I faxed to the Judge Doby and the Attorney for USDA. Judge Doby denied my request and proceeded with the Exparte Hearing.**
- 2. The Attorney for USDA submitted false evidence to the Court in stating that I received a "Letter of Acceleration." The "Acceleration Letter" submitted to the Court was for Brittany Thomas, my deceased brother's**

**estranged daughter. I was the Personal Representative for my brother, Maxie Lee Thomas, Jr. The Attorney for USDA stated that the Petitioner, Laura Toney, received a copy of the letter as evidenced by "Exhibit C." which was addressed to Brittany Thomas. The Attorney was not honest in his statement or the evidence admitted into evidence. On Page 27 and lines 9-11 of the transcript from the Exparte hearing on April 13, 2016, the Attorney verified this dishonesty to the Court. Laura Toney did not receive a "Letter Of Acceleration." This document supposed to be sent certified returned receipt. USDA filed no evidence that the "Letter of Acceleration" was received. The Petitioner was not in attendance to present her defenses. There were (2) remaining defenses. The Attorney for USDA was not honest in stating that there were no other defenses.**

***4. The Requirements of Due Process.*—Although due process tolerates variances in procedure "appropriate to the nature of the case," it is nonetheless possible to identify its core goals and requirements. First, "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a State proposes to deprive them**

**of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel. Ballard v. Hunter, (1907); Palmer v. McMahon, (1890). For instance, proceedings to raise revenue by levying and collecting taxes are not necessarily judicial proceedings, yet their validity is not thereby impaired. Palmer v. McMahon, (1890) Railroad Comm'n v. Rowan & Nichols Oil Co., (1941) (oil field proration order). See also Railroad Comm'n v. Rowan & Nichols Oil Co., (1940) (courts should not second-guess regulatory commissions in evaluating expert testimony) See, e.g., Moore v. Johnson, 582 F.2d 1228, 1232 (9th Cir. 1978) (upholding the preclusion of judicial review of decisions of the Veterans Administration regarding veteran's benefits). Mullane v. Central Hanover Trust Co., (1950). Carey v. Piphus, (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." Mathews v. Eldridge, (1976) Fuentes v. Shevin, 1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. Carey v. Piphus, (1978); Marshall v. Jerrico, Inc., (1980); Nelson v.**

**Adams, S. Ct. 1579 (2000) (amendment of judgement to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity to dispute).**

**RULE 3.3: CANDOR TOWARD THE TRIBUNAL**

**(a) A lawyer shall not knowingly:**

**(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**

**(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or**

**(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.**

**The Petitioner was deprived of adjudication of a Rule 11 imposed on the USDA and their attorneys for violation of Rule 1.16(C).**

**5. The Rule 11 that was filed by the Petitioner was not addressed properly by the Court. Under Rule 11, the court, on motion from the opposing party or on its own initiative, can impose sanctions. When making a motion for sanctions, there are rules to respect. A motion must be timely. It is imperative that a party move for sanctions before a final judgment is rendered. Young v. West Coast Indus. Relations Ass'n. Inc., 144 F.R.D. 206 (D.Del. 1992), makes this requirement clear. In Young, a party moved for sanctions by a motion to amend a final judgment. That was too late. The court held that it was improper to impose Rule 11 sanctions after a final judgment had been rendered, although a motion for a new trial, a motion for alteration or amendment, and a motion for reargument were pending. A motion is timely, if made after a case is dismissed voluntarily or by summary judgment. The court in Pierce v. Commercial Warehouse, supra, addressed this issue. In Pierce, summary judgment.**

**A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue Rule 11 normally will be determined at the end of the**

**litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with the due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further will be necessary..**

**Under the FCPSA, “[t]he entitlement of the aggrieved person must be determined by the trial judge at the conclusion of a trial upon motion of the aggrieved party. . . .” § 15-36-30 (emphasis added).**

**Here the Petitioner filed the Rule 11 before the final judgment. The court failed to acknowledge or rule on it. The petitioner rights for the adjudication of Rule 11 Sanctions were destroyed by Judge Doby because of his negligence or simply because of his lack of candor toward the tribunal.**

**For the above reasons, the Appellant is respectfully requesting that an injunction is ordered in this case until a decision is made from the South Carolina Court of Appeals to the merits of this case. The sale of this property will cause the Petitioner irreparable harm.**

**September 6, 2016**

  
**Laura Toney, Pro Se**

**P.O. Box 722**

**Bishopville, SC 29010**

**(803) 459-6006**

**CERTIFICATE OF SERVICE**

**This is to certify that the Petitioner mailed a copy of the Petition For Injunction and Supplemental Petition For Injunction to the following addressed as follows on September 6, 2016, via United States Postal Service addressed as follows:**

Tyler, Cassell, Jackson, Peace & Silver L.L.P.  
P.O. Box 11656  
Columbia, SC 29211-1656

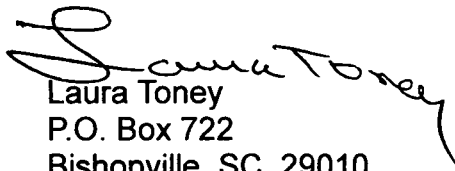
The Honorable Bryan Doby  
P.O. Box 106  
Bishopville, SC 29010-0106

Lee County Clerk of Court  
P.O. Box 387  
Bishopville, SC 29010

**RECEIVED**

SEP 06 2016

SC Court of Appeals

  
Laura Toney  
P.O. Box 722  
Bishopville, SC 29010

September 6, 2016

P.O. Box 722  
Bishopville, SC 29010

South Carolina Court of Appeals

P.O. Box 11629

Columbia, SC 29211

**RE: Transcript**

2015-002380

**RECEIVED**  
SEP 06 2016  
SC Court of Appeals

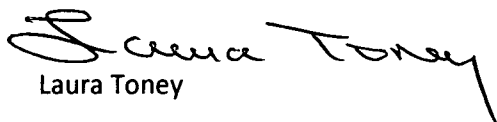
Dear Sir or Madam:

This is to inform the Courts that I have ordered and received the transcripts for the above case.

I will submit the Appellant's Initial Brief in a timely manner.

Thank you for your attention in this matter.

Sincerely,

  
Laura Toney

CC: Tyler, Peace, Silver, Jackson, and Cassell