

# Exhibit 1

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
CASE NO. 2015-CP-10-6819

**RECEIVED**

OCT 19 2016

SC Court of Appeals

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5  
6 TRACY SMITH, )  
7 PLAINTIFF, )  
8 VS. )  
9 )  
10 SARAH GAINNEY AND )  
SAVE, INC., )  
11 DEFENDANTS. )

TRANSCRIPT OF RECORD

APRIL 29, 2016  
CHARLESTON, SC

12  
13 B E F O R E:

HONORABLE KRISTI HARRINGTON, JUDGE

14  
15 A P P E A R A N C E S:

16 TRACY SMITH, Pro Se  
17 For the Plaintiff

18 LAUREN SPEARS, ESQUIRE  
19 Attorney for the Defendant

20  
21 \* \* \* \* \*

22 Ruth C. Weese, RDR  
23 Official Court Reporter  
24 Ninth Judicial Circuit  
25

1 (The following proceedings were held  
2 April 29, 2016, Charleston County, South Carolina,  
3 @ 11:12 a.m.)

4 THE CLERK: Smith versus Gainey.

5 THE COURT: Counsel, state your name  
6 for the record and the party you represent.

7 MR. SMITH: Tracy Smith, pro se  
8 Plaintiff.

9 THE COURT: Are you an attorney?

10 MR. SMITH: No, ma'am.

11 MS. SPEARS: Lauren Spears for the  
12 Defendant Sarah Gainey and Save, Inc.

13 THE COURT: We are here on your motion  
14 to dismiss?

15 MS. SPEARS: Yes, Your Honor.

16 THE COURT: Are you prepared to go  
17 forward on that matter?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Happy to hear from you, Ms.  
20 Gainey, I am sorry, Ms. Spears.

21 MS. SPEARS: May it please the Court,  
22 Your Honor, we are here today on a fairly  
23 straightforward motion to dismiss. Plaintiff has  
24 filed a complaint alleging professional negligence  
25 against Defendants Sarah Gainey and Save, Inc. for

1 care and treatment around October 2012, some  
2 counseling sessions that Plaintiff received through  
3 his employer contract with Defendants. South  
4 Carolina statute 15-36-100 states, "In an action  
5 for damages alleging professional negligence  
6 against a professional licensed by or registered  
7 with the State of South Carolina listed in  
8 subsection (G) or against any licensed health care  
9 facility alleged to be liable based upon the action  
10 or inaction of the health care professional, the  
11 Plaintiff must file as part of the complaint an  
12 affidavit of an expert witness."

13 Plaintiff has failed to file an  
14 affidavit of an expert witness pursuant to  
15 15-36-100 (G)16, Sarah Gainey, the licensed  
16 professional counselor; therefore, Plaintiff has  
17 failed to comply with the statute and we would move  
18 for dismissal of the Plaintiff's claim.

19 MR. SMITH: Your Honor, may I provide  
20 this brief to the Court at this time?

21 THE COURT: That's fine. Thank you.

22 MR. SMITH: Your Honor, I'm not an  
23 attorney. I'm a software engineer. I have had a  
24 couple business law courses earning my college  
25 degree. First of all, I contend that Ms. Gainey

1 has acted outside the scope of her --

2 THE COURT: I understand. What we are  
3 only here for today is the law requires that you  
4 file an affidavit when you allege medical or  
5 professional malpractice. So it is a simple issue.  
6 If you do not have that affidavit the law requires  
7 that I must dismiss this case. Do you have an  
8 affidavit?

9 MR. SMITH: No. I am willing to get  
10 one though.

11 THE COURT: And so when -- you filed  
12 this case 2015?

13 MR. SMITH: Yes.

14 THE COURT: The law requires that when  
15 you file this case you must file it with the  
16 affidavit. Did you do that?

17 MR. SMITH: No, I did not.

18 THE COURT: And when did you have  
19 notice that there was -- that you had failed to  
20 file this affidavit?

21 MR. SMITH: I received their motion --  
22 actually I just received it about a week ago. I  
23 have changed residences. I have been out of town.  
24 I have to look at the date if you are relying on  
25 the date when they sent that. So only recently did

1 I realize I needed that affidavit.

2 THE COURT: So it was filed January  
3 29th of 2016. I am assuming that you received  
4 service fairly close to that time. Would that be  
5 an accurate statement?

6 MR. SMITH: I was probably out of town.  
7 Probably not in town. My mother may have received  
8 it. I apologize for the oversight, but I have not  
9 seen it until recently.

10 THE COURT: And so you have been on  
11 notice not only did you need to file it when you  
12 filed this case in 2015, but you were on notice as  
13 of the filing of this the service on or about  
14 January 29th of 2016. So the statute would allow  
15 me to give you once you had notice, but you again  
16 have failed to do so; is that correct?

17 MR. SMITH: Failed to seek an  
18 affidavit? Yes, I have not sought an affidavit.

19 THE COURT: Is there any reason that  
20 you know that I should not dismiss this case based  
21 upon your failure to follow the law?

22 MR. SMITH: First of all, I believe  
23 that she is outside the scope of her professional  
24 responsibility in her counseling sessions with me.

25 THE COURT: I am sorry. You are

1 pointing at?

2 MR. SMITH: The Defendant is outside  
3 the scope of her professional responsibilities.

4 THE COURT: We don't even get to there.  
5 I don't know how long you have been here, the last  
6 gentleman I explained about the rules of  
7 basketball. I'm not sure, I'm not very computer  
8 savvy so I can't even make an attempt, I will not  
9 even make an attempt to do an IT analogy.

10 But you haven't followed the rules.  
11 And the rules are set up for a very particular  
12 reason the way that they are set up. Every  
13 attorney that's appeared in front of me today has  
14 told me why I need to make sure that the rules are  
15 followed and I need to know why I shouldn't follow  
16 the rules for you here today.

17 MR. SMITH: Again, I did not realize I  
18 needed to file an affidavit. I suggest that she  
19 acted outside the scope of her -- and I would also  
20 like to point out to the Court that she has falsely  
21 stated the dates of her service.

22 THE COURT: And all those things could  
23 be true, Mr. Smith. The problem is that you may  
24 not be able to present those because you haven't  
25 followed the rules. You again have not done what

1 you're supposed to do, but are alleging what she --  
2 what you believe she has not done.

3 MR. SMITH: Your Honor, I have acted to  
4 the best of my ability.

5 THE COURT: And unfortunately that is  
6 not going to save the day here today. Is there any  
7 other reason why this case should not be dismissed  
8 based upon the failure to follow the rules?

9 MR. SMITH: She has made false  
10 statements and I contend she acted outside the  
11 scope of her professional responsibility.

12 THE COURT: And again, Mr. Smith, we  
13 just -- if you don't give me the legal basis to  
14 move this case forward, those things may be true,  
15 but you will not be able to present those because  
16 you have not followed the rules. All right?  
17 Anything further?

18 MS. SPEARS: No, Your Honor.

19 THE COURT: At this point would you  
20 object if I gave him 30 days to file an affidavit?

21 MS. SPEARS: Dismissal without  
22 prejudice?

23 THE COURT: I am sorry?

24 MS. SPEARS: Are you dismissing without  
25 prejudice or for a chance to refile or just giving

1 an additional 30 days?

2 THE COURT: Either one.

3 MS. SPEARS: No objection.

4 THE COURT: Mr. Smith, I'm going to  
5 give you 30 days to get an affidavit. If you do  
6 not comply with the affidavit requirement this case  
7 will be dismissed with prejudice which means that  
8 you cannot file.

9 As of this point, sir, you have -- you  
10 are on notice that this affidavit is required. And  
11 as I indicated to you, and to several of the other  
12 people who have appeared in front of me, you are  
13 entitled to represent yourself. Most of us can  
14 read the law and get a basic understanding of it.  
15 You may have had really good instructors who taught  
16 you business law. But just as I can turn my  
17 computer on or off, but when I really have trouble  
18 I call the professional IT guy up in Columbia to  
19 help me.

20 MR. SMITH: I'm a professional IT guy.

21 THE COURT: So I can -- I would take  
22 that however you take it and it may be that you  
23 need to hire somebody with a little more savvy in  
24 the legal world who has had a few more classes than  
25 a couple of business law.

1 MR. SMITH: Yes.

2 THE COURT: Thirty days or it is  
3 dismissed with prejudice. I will do a Form 4. So  
4 then what I would ask from you is if he doesn't  
5 comply with it that you send an order dismissing it  
6 so that the file is clean. Good luck to you, sir.

7 MR. SMITH: May I ask a quick question?  
8 Is there a way to review this information on line?  
9 I was --

10 THE COURT: I'm not sure what  
11 information you mean.

12 MR. SMITH: Just the motions in case I  
13 have trouble being served at my new address.

14 THE COURT: What is your address?

15 MR. SMITH: 1510 Fairbanks Road.

16 THE COURT: Is that what you have,  
17 James?

18 THE CLERK: I am looking at it right  
19 now.

20 THE COURT: The clerk of court is going  
21 to update your address, but that's about all I can  
22 do for you right here today.

23 MR. SMITH: Thank you, Your Honor.

24 (These proceedings were concluded at  
25 11:40 a.m., April 29, 2016, Charleston County,

South Carolina.)

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CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomate Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of September, 2016 at Charleston, Charleston County, South Carolina.

*Ruth C. Weese*

Ruth C. Weese  
Registered Diplomate  
Reporter

**RECEIVED**  
OCT 19 2016  
SC Court of Appeals

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# Exhibit 2

H|B|S HALL BOOTH SMITH, P.C.

Jack G. Gresh | 40 Calhoun Street, Suite 550  
P: (843) 720-3474 | Charleston, SC 29401  
E: JGresh@hallboothsmith.com | W: www.hallboothsmith.com  
P: (843) 720-3460 F: (843) 720-3475

June 6, 2016

**VIA U.S. MAIL**

The Honorable Kristi Lea Harrington  
300B California Ave.  
Monicks Corner, SC 29461

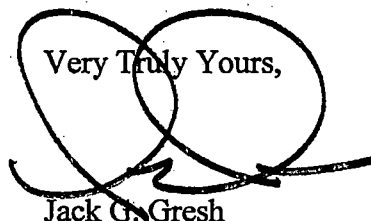
RE: Tracy Smith v. Sarah Gainey and SAVE, Inc.  
Civil Action No.: 2015-CP-10-6819

Dear Judge Harrington:

With regard to the above-referenced matter, please find enclosed an Order of Dismissal. If this order meets your approval, we would appreciate you signing and returning to our office in the enclosed self-addressed stamped envelope.

Should you have any questions or concerns, or need anything, please don't hesitate to contact our office.

Very Truly Yours,



Jack G. Gresh

JGG/csj

Enclosure as stated.

✓ cc: Tracy Smith (with enclosure)



100(B), based on allegations professional negligence against Sarah Gainey, a licensed professional counselor.

The parties appeared before me on April 29, 2016. After a full hearing and reviewing the pleadings and motion, I adjudged that Plaintiff be allowed thirty (30) days in which to provide an expert affidavit alleging at least one negligent act or omission of Defendants, or Plaintiff's Complaint be dismissed with prejudice. A Form 4 Order denying Defendants' Motion was entered on May 6, 2016. As of May 31, 2016, thirty (30) days from the date of the hearing on this matter, Defendants have not been served with any affidavit from any expert on behalf of Plaintiff alleging any negligence on the part of Defendant Sarah Gainey and SAVE, Inc. As such, I hereby adjudge and decree that this matter be DISMISSED WITH PREJUDICE pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-36-100.

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The Honorable Kristi Lee Harrington  
Presiding Judge

\_\_\_\_\_, 2016  
Charleston County, South Carolina

# Exhibit 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2015-CP-10-6819
Tracy Smith,	)	
	)	
Plaintiff,	)	
	)	<b>AMENDED NOTICE OF MOTION AND</b>
v.	)	<b>MOTION TO DISMISS PLAINTIFF'S</b>
	)	<b>COMPLAINT</b>
Sarah Gainey and SAVE, Inc.,	)	
	)	
Defendants.	)	

**TO: TRACY SMITH, *PRO SE* PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Defendants Stacy Gainey, LPC and SAVE, Inc. (collectively "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing all causes of action contained in Plaintiff's Complaint, with prejudice, pursuant to Rules 8(a) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP") for failure to state facts sufficient to constitute a legal cause of action and for failing to comply with S.C. Code Ann. § 15-36-100, which governs all actions alleging professional negligence.

**Motion to Dismiss**

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6). Plaintiff is required to set forth a short and plain statement of the facts showing he is entitled to relief pursuant to SCRCP Rule 8(a), and he has failed to do so. A Complaint that fails to state facts sufficient to state a claim should be dismissed pursuant to SCRCP Rule 12(b)(6). Defendant's Motion to Dismiss is predicated on well-established South Carolina law governing professional

negligence actions, specifically S.C. Code Ann. § 15-36-100 *et. seq.* These statutory provisions apply to this case and control its disposition.

A. **Plaintiff Failed to Attach an Expert Affidavit Pursuant to S.C. Code Ann. § 15-36-100**

Plaintiff's Complaint alleges professional negligence against Defendants. Plaintiff states Defendant "Sarah L. Gainey, LPC, CEAP is President of SAVE, Inc. and personally counseled Plaintiff. SAVE, Inc. provides behavioral healthcare services and training for personal and Supervisory development." See Complaint, p. 1, lines 14-19. Plaintiff's Complaint further states that "as part of plaintiff's employment agreement, plaintiff sought services including assistance, counseling, treatment, therapy for occupational problems resulting from his employment with Showa Denko." See Complaint, p. 2, lines 3-7. Plaintiff's Complaint further alleges breach of duty of care, breach of agreement to maintain confidentiality, breach of fiduciary duty and intentional infliction of emotional distress by Defendant Sarah Gainey. See Complaint, *generally*. S.C. Code Ann. § 15-36-100 states:

"in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

S.C. Code Ann. § 15-36-100(B)

Pursuant to S.C. Code Ann. § 15-36-100(G)(17), licensed professional counselors are health care providers subject to the statutory requirements of a contemporaneously filed expert affidavit with Plaintiff's Complaint. At all times relevant hereto, Sarah Gainey was a licensed professional counselor licensed by the State of South Carolina. See Complaint, p.1, ln. 14.

gross wanton gross Negligence

Plaintiff's Complaint criticizes the Defendants for the negligent and improper counseling sessions. See Complaint, generally. However, Plaintiff fails to attach an affidavit from a competent expert specifying at least one negligent act of omission claimed to exist as the basis for his Complaint. Therefore, Plaintiff has failed to comply with South Carolina law controlling actions for professional negligence.

**B. Plaintiff Has Failed to Comply with the Statute of Limitations**

The statute of limitations for an action for medical malpractice/professional negligence is three (3) years after the alleged incident. South Carolina law states: "(A) In any action, other than actions controlled by subsection (B), to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession, must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section." S.C. Code Ann. § 15-3-545. "The statute of limitations begins to run at the time the individual has constructive or inquiry notice." Kelly v. Logan, Jolley, & Smith, LLP, 383 S.C. 626, 634 (2009). ~~The allegations contained in Plaintiff's Complaint stem from counseling provided by Defendants in September and October of 2012.~~ As pursuant to South Carolina law, Plaintiff's Complaint must have been filed on or before three years from the last date of treatment, omission or operation giving rise to the cause of action, or, October 2015. Plaintiff filed his Complaint on December 18, 2015. See Complaint, generally. Plaintiff has failed to comply with the applicable statute of limitations; and as such, is time barred from bringing his claims. Therefore, Plaintiff's Complaint should be dismissed.

*Not within scope of profession*

*False*

WHEREFORE, Defendants respectfully move this Court for an Order dismissing Plaintiff's Complaint, with prejudice, pursuant to SCRCP Rule 12(b)(6), and to award Defendants such other and further relief as this Court deems just and proper.

Respectfully submitted this 17 day of January, 2016, in Charleston, South Carolina.

**HALL BOOTH SMITH, P.C.**



---

Jack G. Gresh, SC Bar No. 75188  
Lauren V. Spears, SC Bar No. 100994  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
Phone: 843.720.3460  
Fax: 843.720.3475  
Email: [jgresh@hallboothsmith.com](mailto:jgresh@hallboothsmith.com)  
[lspears@hallboothsmith.com](mailto:lspears@hallboothsmith.com)

*Counsel for Defendants*

# Exhibit 4



# Exhibit 5

Tracy Smith

2015-CP-10-6819

V

SAVE Inc. Sarah Going

Motion to Compel  
Release of Medical Records

FILED  
2016 MAY 27 PM 2:36  
JULIE A. REYNOLDS  
CLERK OF COURT  
BY BS

Pro Se Plaintiff respectfully requests  
the court to order Sarah Going of  
SAVE Inc. to release Plaintiff's medical  
records related to treatment/counseling.

Defendant Sarah Going, owner/president of  
SAVE Inc refuses to release these records.

Respectfully Submitted

Tracy Smith

Tracy Smith Pro Se Plaintiff

# Exhibit 6



# SAVE

## Strategies to Assist Valued Employees

*your employee assistance program*

A confidential consultation,  
counseling and referral program  
for employees and their dependents.

### CONFIDENTIAL

SAVE complies with all state and federal laws governing privacy. Information about a client's problem cannot be released without the individual's written consent.

Confidentiality is the *most important* element in the counseling relationship.

### PROGRAM COST

There is NO COST to you and your dependents. The fee for EAP has already been paid by your company. If you and your counselor decide additional services are needed, you will be responsible for any costs your insurance does not cover.

### SHORT TERM COUNSELING

Most problems can be managed by short-term counseling. Throughout the entire process, your counselor maintains a system of support and follow-up with you. If an outside resource is required, your exact need, financial situation, and geographic location are all considered before a referral is made.

[www.saveeap.com](http://www.saveeap.com)

HOW CAN WE HELP YOU?

As easy as picking up the phone. Call 1.843.747.5327

# Exhibit 7

**EMPLOYEE ASSISTANCE CERTIFICATION COMMISSION**  
4350 North Fairfax Drive, Suite 410  
Arlington, VA 22203 USA  
(703) 387-1000 X 311

**STANDARDS OF PRACTICE**

**SUMMARY:** This document outlines the standards of practice for Certified Employee Assistance Professionals (CEAPs) which include: 1) the Client Bill of Rights, and 2) the CEAP Code of Conduct.

**SECTION 1 – CLIENT BILL OF RIGHTS**

CEAPs are encouraged to display the Client Bill of Rights in their office and must make a copy available upon request. The following principles comprise the Client Bill of Rights:

- I. Individual clients have the right:
  - A. To expect a CEAP has met the minimal qualifications as required by EACC;
  - B. To obtain a copy of the CEAP Code of Conduct;
  - C. To report complaints regarding CEAP conduct to the EACC;
  - D. To be informed of all costs of professional services before receiving such services;
  - E. To obtain copies of their own case records and to have the information therein explained clearly, subject to applicable laws;
  - F. To expect the CEAP to maintain confidentiality of personal information as required by law;
  - G. To be informed of any relevant policies regarding confidentiality, to decline any recommended services, and to be fully apprised of the potential consequences of such a decline.

II. Organizational clients have the right:

- A. To expect a CEAP has met the minimal qualifications as required by EACC;
- B. To obtain a copy of the CEAP Code of Conduct;
- C. To report complaints regarding CEAP conduct to the EACC;
- D. To be informed of all costs of professional services before receiving such services;
- E. To full and open disclosure of any potential conflicts of interest, organizational impacts, or similar negative effects from services rendered.

## **SECTION 2 – CODE OF CONDUCT**

### **PREAMBLE**

Certified Employee Assistance Professionals are dedicated to enhancing the worth, dignity, potential, productivity and uniqueness of their clients, be they individuals or organizations. They are committed to increasing knowledge of human behavior and organizational effectiveness through continuous efforts to improve their professional and personal growth and to recognize the need for continued training and education to prepare themselves to serve work organizations and persons of all ages and cultural backgrounds. They are accountable for their activities and to recognize the boundaries of their competence and limitations of their techniques. A CEAP's concerns are for the best interest of his/her clients, colleagues, and for society in general. The CEAP respects the rights and responsibilities of professional colleagues and remains accountable for upholding the ethical principles of the EACC. The CEAP treats colleagues with respect and good faith and extends full professional consideration to them.

In pursuit of these ideals, individuals who are awarded the CEAP certification shall abide by the following code of conduct:

### **A. RESPONSIBILITY:**

A CEAP's primary responsibility is to the client's welfare. To this end, the CEAP often has multiple clients including employees, family members, employers, unions, and representatives of an organization, etc. The CEAP is responsible for maintaining professional standards and ethics in all exchanges with such clients, be they via face-to-face, telephone, electronic, or any other means by which services are provided and client information is transmitted or received.

Unprofessional conduct includes, but is not limited to, the following:

1. Exploiting relationships with clients for the CEAP's personal gain or financial advantage;
2. Failing to maintain a professional relationship with all clients; where a dual relationship is unavoidable, the CEAP must maintain appropriate professional boundaries. The CEAP must avoid initiating or maintaining any

activities or relationships which may impair or diminish the CEAP's professional judgment, objectivity, and effectiveness or increase the risk of client exploitation. Examples of such dual relationships include engaging in close personal relationships with clients, providing services to friends or family members, and advocating against the interests of sponsoring organizations;

3. Failing to safeguard the rights of any client, as explained in Section 1 *Client Bill of Rights* above;
4. Failing to assist the client in seeking services appropriate to and consistent with the client's needs, insurance, financial resources and preferences;
5. Referring a client to another professional or community resource when the CEAP knows or has reason to know that such person or organization is not qualified by training, experience, or licensure to perform the services;
6. Failing to clarify to the client that all decisions are the right and responsibility of the client;
7. Failing to maintain sufficient case records (written, electronic, or otherwise) in a confidential, secure and professional manner in accordance with state and federal legislation as well as accepted EAP standards;
8. Failing to report EA program activities to the work organization without incorporating and adhering to guidelines regarding client confidentiality;
9. Failing to respect confidential business communications and proprietary organizational client information and disclosing such information without a client's prior informed consent (unless required by applicable law).

**B. COMPETENCE:**

The CEAP shall act in accordance with the highest standards of professional integrity and competence. CEAPs will seek only those positions in the delivery of service to clients for which they are professionally qualified.

Unprofessional conduct includes, but is not limited to, the following:

1. Practicing in an EAP content area in which the CEAP has not obtained adequate professional training;
2. Failing to recognize potential or actual harm to the client when assessing, treating, or advising or consulting with clients;

3. Failing to seek appropriate professional consultation for clients whose problems are outside the CEAP's competence;
4. Engaging in dishonesty, fraud, deceit, or misrepresentation while performing professional activities;
5. Failing to obtain continuing professional education, training, knowledge, personal awareness and relevant techniques necessary to assist clients;
6. Failing to seek appropriate professional assistance for the CEAP's own personal problems or conflicts when they are likely to contribute to inadequate services to the client.

**C. ETHICAL AND LEGAL STANDARDS:**

The CEAP's professional relationship with clients, students, trainees, colleagues, and the public is based upon honesty, mutual trust, confidence, and respect. The CEAP must avoid any action that would violate or diminish the legal and civil rights of these individuals.

Unprofessional conduct includes, but is not limited to, the following:

1. Failing to make full disclosure of the functions, purposes, range of services, and limitations of any services or activities;
2. Failing to recognize his/her professional limitations and to act outside the scope of his/her established professional competence;
3. Failing to inform clients of the innovative nature and possible risks associated with new services or techniques in order to allow clients to exercise freedom of choice regarding such services;
4. Failing to make or recommend referral to other professional, technical or administrative resources when such referral is in the best interest of the client(s);
5. Failing to uphold the welfare of the client. This includes failing to place the interests of clients ahead of those of the CEAP by declining non-contractual benefits from the client relationship, even if such benefits in no way harm the client, and failing to disclose potential or existing conflicts of interests. Unprofessional conduct results when a CEAP does not inform the client of a conflict and does not refer to another CEAP or appropriate professional;
6. Practicing inhumane or discriminatory treatment toward any person or group of persons on the basis of age, race, gender, religion, sexual orientation, national origin or disability;

7. Failing to have sensitive regard for the moral, social, and religious beliefs of clients and communities, or trying to impose the CEAP's beliefs on clients;
8. Engaging in romantic or sexual activities with any clients during the professional client relationship and for a period of five years beyond the last date on which the member and the client interacted professionally;
9. Acting in any manner that may possibly compromise the professional relationship;
10. Practicing under the influence of alcohol or other mind and/or mood altering drugs that are not prescribed by a licensed physician and/or those which may affect their ability to practice in a competent manner.

**D. CONFIDENTIALITY:**

Prior to commencement of professional services, the CEAP will fully disclose, preferably via a client statement of understanding or disclosure statement, the relevant parameters of confidentiality as required by accrediting bodies, applicable laws, existing regulations, and program guidelines. In the absence of such waivers of confidentiality, the CEAP holds in confidence all client information obtained in the course of professional service.

Unprofessional conduct includes, but is not limited to, the following:

1. Failing to fully disclose the full parameters of confidentiality, in writing when possible, prior to the commencement of professional services;
2. Revealing a confidence of a client except:
  - a. as required by law or valid court order;
  - b. where the CEAP is a defendant in a civil, criminal, or disciplinary action arising from the services provided, in which case only the relevant client information may be disclosed in the course of that action; where there is clear and imminent danger to the client or others, the CEAP will take action as required by law or previously disclosed program guidelines;
  - c. when discussing case material with another professional for the specific purpose of professional consultation;
3. Failing to maintain confidentiality for all information about the client which is obtained from tests or other means;

4. Failing to obtain written informed consent from each client before electronically recording sessions with that client or before permitting third party observation of their sessions;
5. Failing to maintain, store or dispose of client records in a manner which ensures security and confidentiality;
6. Failing to insure that the content of disclosed confidential information is accurate and unbiased when releasing requested information from client records;
7. Failing to protect the confidences of the client from disclosure by employees, associates, family members and others;
8. Failing to fully disguise the identity of a client(s) when using material derived from EA services for purposes of training, research or reporting;
9. Failing to obtain a waiver of consent from each family member when disclosing the client's information in family sessions.

**E. RESPONSIBILITY TO COLLEAGUES:**

The CEAP respects the rights and responsibilities of professional colleagues and remains accountable for upholding the ethical principles of the EACC. The CEAP treats colleagues with respect and good faith and extends to them full professional consideration.

Unprofessional conduct includes, but is not limited to, the following:

1. Failing to maintain the security and non-disclosure of confidential information shared by colleagues in the course of professional relationships and transactions with those colleagues;
2. Failing to take appropriate action when it is apparent that another CEAP has violated the CEAP Code of Conduct. Discussion of the violation with the CEAP in question is encouraged. If this action is not undertaken and the issue satisfactorily resolved, then the CEAP must file a complaint with the Employee Assistance Certification Commission via the process defined in the EACC Code of Professional Conduct;
3. Maligning and/or harassing another professional;
4. Failing to understand areas of competence of related professionals and/or not making full use of other professional, technical, and organizational resources that best serve the interest of the client(s).

**F. RESEARCH, MEASUREMENT AND EVALUATION:**

When using assessment instruments, evaluation measurements or conducting research activities, the CEAP shall make every effort to promote the welfare and best interests of the client. The CEAP guards against the misuse of all collected data and respects the client's rights to know the results, interpretations, and any conclusions or recommendations. The CEAP recognizes that research activities must be conducted with full respect for the rights and dignity of participants and with full concern for their welfare. Client participation in evaluation, measurement and research activities must be voluntary unless it can be demonstrated that involuntary participation will have no harmful effects on the subjects and is essential to the investigation. The ultimate responsibility for ethical activity lies with the principal researcher.

Unprofessional conduct includes, but is not limited to, the following:

1. Failing to provide the client with complete information, through an informed consent mechanism, regarding the purpose of the proposed activity and its risks and benefits prior to its initiation and in language that the client can understand;
2. Failing to evaluate carefully the specific theoretical bases, validity, reliability, and appropriateness of activities in a given situation or with a particular client, and to carefully consider the possible consequences for clients participating in these activities;
3. Failing to protect each participant from unwarranted physical, emotional and mental harm;
4. Failing to inform the client that he/she is free to withdraw at any time during the activity;
5. Using activities or instruments beyond the CEAP's competence;
6. Using measures, instruments or techniques that have become obsolete, discredited or which lack a sufficient evidentiary basis;
7. Knowingly reporting distorted, erroneous, or misleading information;
8. Failing to give recognition to previous work or colleagues when conducting and reporting research;
9. Failing to ensure that all research data is secure and is destroyed when the information is no longer of value for its original purpose.

**G. PROFESSIONAL REPRESENTATION:**

The CEAP must adhere to the Professional Code of Conduct established by the EACC. CEAPs must provide those services and represent themselves as competent only within the boundaries of their professional services, education, training, license, certifications, consultation received, supervised experience, advisement services, or other relevant professional experience. The CEAP is responsible for conveying accurate information regarding his/her professional capabilities that is necessary for the client or potential client to make appropriate selection of services.

Unprofessional conduct includes, but is not limited to, the following:

1. Providing or inaccurately representing the CEAP's professional competence, education, training, credentials, experience and services or knowingly failing to correct any misrepresentations provided by others;
2. Making claims, promises, or guarantees, which promise more than the CEAP can realistically provide;
3. Failing to ensure that advertisements and publications, whether in directories, brochures, newspapers, web sites, or other literature, are formulated to convey accurate information as is necessary for clients or potential clients to make informed decisions and appropriate selection of services.

Revised and adopted: 4/15/10  
Section II, A & C revised: 10/2011

# Exhibit 8

STATE OF SOUTH CAROLINA

COUNTY OF *Charleston*

IN THE COURT OF COMMON PLEAS

*Tracy Smith*

Plaintiff(s)

CIVIL ACTION COVERSHEET

2015 -CP-10 -6819

vs.

*Save Inc. Sarah Goincy*

Defendant(s)

Submitted By: *Tracy Smith*  
Address: *4351 Park Island Road*  
*Hollywood, SC 29449*

SC Bar #:  
Telephone #: *843 709 7346*  
Fax #:  
Other:  
E-mail: *Trace @ OLASPC.COM*

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

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CLERK OF COURT  
DEC 17 PM 3:11

- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> <b>Contracts</b>                      | <input type="checkbox"/> <b>Torts - Professional Malpractice</b>                      | <input type="checkbox"/> <b>Torts - Personal Injury</b>   | <input type="checkbox"/> <b>Real Property</b>           |
| <input type="checkbox"/> Constructions (100)                   | <input type="checkbox"/> Dental Malpractice (200)                                     | <input type="checkbox"/> Conversion (310)   | <input type="checkbox"/> Claim & Delivery (400)         |
| <input type="checkbox"/> Debt Collection (110)                 | <input type="checkbox"/> Legal Malpractice (210)                                      | <input type="checkbox"/> Motor Vehicle Accident (320)   | <input type="checkbox"/> Condemnation (410)             |
| <input type="checkbox"/> General (130)                         | <input type="checkbox"/> Medical Malpractice (220)                                    | <input type="checkbox"/> Premises Liability (330)   | <input type="checkbox"/> Foreclosure (420)              |
| <input checked="" type="checkbox"/> Breach of Contract (140)   | Previous Notice of Intent Case #  | <input type="checkbox"/> Products Liability (340)   | <input type="checkbox"/> Mechanic's Lien (430)          |
| <input type="checkbox"/> Fraud/Bad Faith (150)                 | 20 <u>-NI-</u>  | <input checked="" type="checkbox"/> Personal Injury (350)   | <input type="checkbox"/> Partition (440)                |
| <input type="checkbox"/> Failure to Deliver/<br>Warranty (160) | <input type="checkbox"/> Notice/ File Med Mal (230)                                   | <input type="checkbox"/> Wrongful Death (360)   | <input type="checkbox"/> Possession (450)               |
| <input type="checkbox"/> Employment Discrim (170)              | <input type="checkbox"/> Other (299)  | <input type="checkbox"/> Assault/Battery (370)  | <input type="checkbox"/> Building Code Violation (460)  |
| <input type="checkbox"/> Employment (180)                      |   | <input type="checkbox"/> Slander/Libel (380)  | <input type="checkbox"/> Other (499)                    |
| <input type="checkbox"/> Other (199)                           |   | <input type="checkbox"/> Other (399)  |   |
| <input type="checkbox"/> <b>Inmate Petitions</b>               | <input type="checkbox"/> <b>Administrative Law/Relief</b>                             | <input type="checkbox"/> <b>Judgments/Settlements</b>   | <input type="checkbox"/> <b>Appeals</b>                 |
| <input type="checkbox"/> PCR (500)                             | <input type="checkbox"/> Reinstate Drv. License (800)                                 | <input type="checkbox"/> Death Settlement (700)   | <input type="checkbox"/> Arbitration (900)              |
| <input type="checkbox"/> Mandamus (520)                        | <input type="checkbox"/> Judicial Review (810)  | <input type="checkbox"/> Foreign Judgment (710)   | <input type="checkbox"/> Magistrate-Civil (910)         |
| <input type="checkbox"/> Habeas Corpus (530)                   | <input type="checkbox"/> Relief (820)   | <input type="checkbox"/> Magistrate's Judgment (720)  | <input type="checkbox"/> Magistrate-Criminal (920)      |
| <input type="checkbox"/> Other (599)                           | <input type="checkbox"/> Permanent Injunction (830)                                   | <input type="checkbox"/> Minor Settlement (730)   | <input type="checkbox"/> Municipal (930)                |
|  | <input type="checkbox"/> Forfeiture-Petition (840)                                    | <input type="checkbox"/> Transcript Judgment (740)  | <input type="checkbox"/> Probate Court (940)            |
|  | <input type="checkbox"/> Forfeiture-Consent Order (850)                               | <input type="checkbox"/> Lis Pendens (750)  | <input type="checkbox"/> SCDOT (950)                    |
|  | <input type="checkbox"/> Other (899)  | <input type="checkbox"/> Transfer of Structured<br>Settlement Payment Rights<br>Application (760) | <input type="checkbox"/> Worker's Comp (960)            |
| <input type="checkbox"/> <b>Special/Complex /Other</b>         | <input type="checkbox"/> <b>Pharmaceuticals (630)</b>                                 | <input type="checkbox"/> Confession of Judgment (770)   | <input type="checkbox"/> Zoning Board (970)             |
| <input type="checkbox"/> Environmental (600)                   | <input type="checkbox"/> Unfair Trade Practices (640)                                 | <input type="checkbox"/> Petition for Workers<br>Compensation Settlement<br>Approval (780)        | <input type="checkbox"/> Public Service Comm. (990)     |
| <input type="checkbox"/> Automobile Arb. (610)                 | <input type="checkbox"/> Out-of State Depositions (650)                               | <input type="checkbox"/> Other (799)  | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Medical (620)                         | <input type="checkbox"/> Motion to Quash Subpoena in<br>an Out-of-County Action (660) |   | <input type="checkbox"/> Other (999)                    |
| <input type="checkbox"/> Other (699)                           | <input type="checkbox"/> Pre-Suit Discovery (670)                                     |   |   |
| <input type="checkbox"/> Sexual Predator (510)                 |   |   |   |

Submitting Party Signature: *Tracy Smith*

Date: *12-17-2015*

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

CHARLESTON COUNTY COURT OF COMMON PLEAS

Tracy Smith,

Plaintiff,

vs.

Sarah Gainey, SAVE, INC.

Defendant

Case No.: 2015-CP-10-6819

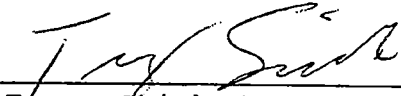
SUMMONS

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2015 DEC 17 PM 3:17  
CLERK OF COURT

TO DEFENDANT SARAH GAINNEY, SAVE INC.

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated this Seventeenth day of  
December, 2015

  
Tracy Smith (Pro Se Litigant)  
4351 PARK ISLAND ROAD  
HOLLYWOOD, SC 29449

CHARLESTON COUNTY COURT OF COMMON PLEAS

Tracy Smith, ) Case No.: [Number] 2015-CP-10-6819  
Plaintiff, )  
vs. ) Complaint:  
Sarah Gainey, Save Inc. ) Breach Of Duty of Care,  
Defendant ) Misrepresentation,  
 ) Breach Of Contract,  
 ) Breach Of Fiduciary Duty,  
 ) Intentional Infliction of Emotional  
 ) Distress

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CLERK OF COURT  
15 DEC 17 PM 3:17

Parties

Sarah L. Gainey, LPC, CEAP is President of SAVE, Inc. and personally counseled Plaintiff. SAVE, Inc. provides behavioral healthcare services and training for personal and Supervisory development. SAVE is an independent counseling and healthcare provider.

Venue

Venue is proper as Counseling was rendered in Charleston County at SAVE clinic at 4130 Faber Place.

1  
2 Facts

3 As part of plaintiff's employment agreement, plaintiff  
4 sought services including assistance, counseling, treatment,  
5 therapy for occupational problems resulting from his employment  
6 with Showa Denko.  
7

8 Plaintiff initially received counseling treatment from  
9 Sarah Gainey of SAVE Inc. Early during this treatment Sarah

10 Gainey requested plaintiff sign a release document to allow her  
11 to verbally discuss matters with Plaintiff's coworkers.  
12

13 Plaintiff decided against this agreement at this early stage of  
14 treatment. Sarah Gainey subsequently ceased personal counseling  
15 and instead referred Plaintiff to Jonathon Kessler who was  
16 either a subcontractor or employed by SAVE, Inc. or employed by  
17 Sarah Gainey.  
18

19 Plaintiff received assistance, counseling, and treatment  
20 from Jonathon Kessler at SAVE clinic at 4130 Faber Place up to  
21 and including the date John Wing of Showa Denko wrongfully  
22 terminated Plaintiff's employment.  
23  
24  
25  
26  
27  
28

1 Cause Of Action

2  
3 Plaintiff incorporates the facts and allegations of  
4 previous paragraphs as if stated verbatim.

5 Breach of duty to obtain adequate history. Sarah Gainey  
6 and SAVE inc. were grossly negligent by failing to obtain an  
7 adequate history and understanding of plaintiff's work  
8 environment causing severe emotional distress and damage to  
9 plaintiff.  
10

11 Breach of Duty of Care. Sarah Gainey breached her duty to  
12 use reasonable care in providing assistance and treatment of  
13 plaintiff by intentionally raising her voice and using  
14 accusatory language during counseling of plaintiff causing  
15 severe emotional distress and damage to plaintiff.  
16

17 Breach of agreement to maintain confidentiality. Sarah  
18 Gainey shared confidential information regarding Plaintiff among  
19 management of Showa Denko causing severe emotional distress and  
20 damage to plaintiff.  
21

22 Breach of Fiduciary Duty. Sarah Gainey acted with Gross  
23 negligence and through her irresponsible actions, statements,  
24 and disclosures financially damaged plaintiff.  
25

26 Intentional Infliction of Emotional Distress. Sarah Gainey  
27 acted with Gross negligence and through her irresponsible  
28

1 actions, statements, and disclosures emotionally harmed,  
2 severely distressed, and severely damaged plaintiff.


3 Breach of Duty to obtain Peer Consultation. Sarah Gainey  
4 failed to obtain Peer Consultation and seek professional  
5 consultation with appropriate parties and agencies in her  
6 efforts to reconcile her dual obligations to Plaintiff and Showa  
7 Denko causing severe emotional distress and damage to plaintiff.  
8  
9

10 Relief  
11

12  
13 Wherefore, Plaintiff prays for the following relief.  
14

- 15 1) Lost wages, benefits, and expenses expended  
16 seeking to rectify this matter.  
17  
18 2) Compensation for severe, pervasive, persistent  
19 emotional distress.  
20  
21 3) Such other and further relief as the Court deems  
22 appropriate.  
23

24 Dated this Tenth day of  
25 December, 2015

26   
27 Tracy Smith (Pro Se Litigant)  
28

# Exhibit 9

Release of HIPPA-Approved Designated Record Set (DRS)

Client: Tracy Smith SSN: not given

First Session: 9-7-12 Last Session: 12-18-12 Total Sessions to Date: 8

CPT Code for treatment modality: 90801  90806  90808  90847  99354

Frequency of treatment: 1 x week  2 x week  1 x month  2 x month  varied

Results of Clinical Testing: No tests given  Tests: \_\_\_\_\_

Symptoms: anxiety  mood problems  anger  alcohol/drugs  psychosis  suicide   
homicide  academic stress  social stress  traumatic stress  marital stress   
work stress  somatic complaints  adjustment problems  sexual problems   
personality problems  cognitive problems  sleep problems  impulse-  
control problems  relational problems  other problems  occupational

Functionality: normal  abnormal  occupational problem problem

Diagnosis: Axis I V62.2 occupational problem

Axis II V71.09 no diagnosis on Axis II

Axis III \_\_\_\_\_

Axis IV occupational problem

Axis V GAF as of the last session 70

Progress as of the last session: getting better  getting worse  about the same

Prognosis as of the last session: good  poor  guarded  unsure at this time

# Exhibit 10

Confidential Work Product In Response to Litigation

My name is Jonathan N. Kessler. I reside at 1820 Gun Club Road, Charleston, SC 29414. I give this written statement for consideration by any forensic expert witness who may review this matter for my attorney.

Attached to this statement is my *Curriculum Vitae*. I am an experienced Licensed Independent Social Worker. I work full-time for the Veterans Administration at its hospital in Charleston, South Carolina. There, I provide daily services to veterans, such as discharge planning, dialysis coordination and supervision of nine social work clinicians. Other than the instant lawsuit commenced by Tracy Smith, I have never been sued. I have never had an ethical complaint made against me. I have never had my license suspended or revoked. Since 2004, I also have worked part-time (about four hours a week) as an independent contractor for *Strategies to Assist Valuable Employees, Inc.* also known as "SAVE" in Charleston, South Carolina. SAVE is an Employment Assistant Program sometimes referred to as an "EAP." EAP services differ markedly from other clinical counseling services.

This written statement by me addresses some of my professional services (at SAVE) to Plaintiff Tracy Smith ("Smith") and to his employer, Showa Denko Carbon, Inc. ("Employer"). SAVE has a longstanding professional relationship with Employer and has received and handled many EAP referrals from Employer. I am experienced in providing EAP counseling services to hundreds of employees and their employers. I am familiar with the standards of care expected of an EAP counselor.

Employer referred Smith, its employee, to SAVE for EAP counseling on or about September 4, 2012. Smith was seen by SAVE's Director, Sarah Gainey, LPC, and who provided the initial EAP services to Smith and Employer. Ms. Gainey met with Smith twice at SAVE's office. Ms. Gainey then referred Smith to me, in an effort to try to establish a better rapport with Smith and to attempt further EAP services, and notably to try to salvage the working relationship between Smith and Employer. I did not review Ms. Gainey's progress notes prior to that point, so that my assessment of Smith might remain independent.

I saw Smith for a total of six sessions between September 25, 2012, and December 18, 2012.

I understood that Smith had been referred to SAVE by Employer's human resources director, Clint Lucas, as part of disciplinary action by Employer against Smith.

On September 25, 2012, Smith arrived for his session with me. I went over with Smith and had him execute a Employee Statement of Understanding which is self-explanatory. I also went over with Smith and had him execute an Authorization for Release of Protected Health Information. That agreement states that Smith expressly consented to my communicating (in

person or telephonically) certain information to Employer, such as: dates of my sessions with Smith, progress in my sessions with Smith, Smith's compliance and attendance and participation in the sessions, and my recommendations as to Mr. Smith's ability to engage in the therapeutic process. That signed agreement was faxed to Employer's HR director, as I understand it. On that date, Smith in his session reported to me that he was on administrative leave. He understood that he was there as a result of disciplinary action. Smith stated that an IT department employee had overheard Smith yelling and cursing at another IT team member- which Smith denied doing. Smith stated that he believed that some of his team members resented him because he 'plays the course, not the people'. Smith explained that he was brought in by Employer's IT manager to eventually take on the role as IT manager. Smith stated when he started with Employer, Smith wanted to integrate the Employer's network as a personal goal but he came to conclude that he was only there for data management and not for systems improvement. Through anecdotes Smith shared 'evidence' of his value to Employer and Smith presented a file folder of alleged evidence (e-mails, spreadsheets, etc.). Smith came across in that session as somewhat self-deprecating ("I tend to ramble") but also as grandiose ("I'm the most qualified to act as the IT manager"). Smith stated that his 'outburst' at work was reported by a 'spiteful' co-worker, and Smith minimized that incident. Smith admitted to job dissatisfaction and not receiving validation for his ideas and technical mastery. Our next session goal was to work on his interpersonal relationship and communication skills. On September 26<sup>th</sup>. I called Employer and reported that Smith had attended EAP counseling the day prior. Again, before seeing this client I understood from my coworker, Ms. Gainey, that Mr. Smith was on administrative leave and that the referral to SAVE was supervisor-mandated.

The next session was on October 9, 2012. Smith arrived thirty minutes late to his session, and reported that his 'car was on fire'. Smith brought with him a folder containing more evidence/data. Smith was difficult to redirect during the session, and I asked him not to bring data folders to future sessions in order to let us focus on interpersonal skills. Smith stated that he thought Employer was 'squeezing out' the older work force. Smith stated that his aspiration was to complete a working product (networking goal as I previously stated) as a 'direct link' to upper management. He also stated that in the two years of employment there, the company was always "contentious" as it was in 'recovery' from an earlier incident. I asked Smith about his prior work experience and he reported some consultant work, and work at Allstate, Brooks Hill, and some accounting. Smith mentioned that he scored low on "assertiveness." He reported that he 'side-steps' that issue, but that Smith was still perceived as aggressive. I offered to role play, at our next session, the part of his employer or coworker in order to facilitate identification of a positive communication style while alerting Mr. Smith to ineffective, or condescending speech. I was unable to initiate interpersonal or communication skill-building this session due to Smith's late arrival and his insistence on speaking to his evidence and data. Later, I notified Employer (HR) of Smith's attendance at that session.

The next session was on October 23, 2012. I recall that Smith did not intend to propose to management his ideas then to help improve the company and that Smith declined to participate in role play. The session focused on Smith's personal background and family. Smith reported that he had a "survivor mentality" and a "nurturing solitude." He described some traits of his parents and siblings. Smith indicated he had dated someone for seven years, but he believed marriage was for having kids and for financial benefit. Smith's personal goals included developing a professional accounting system, maintaining health, having a 'cash cushion' and growing fruit trees on a farm in Louisiana. Smith indicated his parents wanted him to settle down and buy a house. At some point that day I spoke with Clint Lucas, the Human Resources Director at Employer. Lucas indicated that Smith still was not forming constructive relationships at Employer, Smith was offending people, Smith was talking down to supervisors and co-workers, and Smith was trying to change their system. I indicated to Lucas my continuing EAP goal of improving Smith's interpersonal skills. We discussed nothing that went beyond that, nothing that went beyond the proper scope of such an EAP plan and/or any employer feedback, and we discussed nothing outside the categories of and limitations on information Smith had authorized me and SAVE to disclose to Employer. Again, Employer's stated goal for Mr. Smith was to assist him with developing better interpersonal skills, more specifically to be able to better articulate his ideas in a manner less "offensive" and more "palatable" in order to form more constructive working relationships.

The next session was on November 13, 2012. Smith arrived on time and brought along a 'professional profile' (Profile XT, Grenell Consulting Group LLC). Smith indicated the profile (test) was completed on him and some other colleagues. The profile was dated 8/28/11. Profile documents showed many positive traits but also that Smith was rigid and judgmental - which he has been of his employer and colleagues. Smith stated, "I know my failures". We then focused on Smith's interpersonal skills but also explored his job culture/dynamics. Smith reported that Employer was like the TV show "Survivor" and people there were getting pushed out. Smith believed that it would be best for Employer to have a better company culture, but that "now, the best defense is offense." Smith viewed his job as a career stepping stone. Smith was not open to the concept of having more willingness to admit mistakes in order to gain trust with his colleagues and to help build a better work culture for increased productivity. Smith indicated that he felt he 'inherited' Employer's problems. Interpersonal skill training begins with a robust education on interpersonal dynamics, identification of his interactive style and communication pattern, which Smith would only superficially explore with me. I did not, to the best of my recollection, inform Employer of this session, and Employer did not contact SAVE to inquire about whether Smith had attended this session. There was no requirement I contact Employer.

The next session was on December 4, 2012. Smith arrived on time for the session and was cooperative and fully-participatory in process. He reported that he initially resented EAP sessions, but no longer did. He expressed frustration with Employer and immediate supervisors regarding implementing change. Smith wanted to remain employed for his 'resume' but he

hoped to 'make an impact' that would be noticed (i.e. system networking, as I previously mentioned). We reviewed the ProfileXT again together. The profile suggested inflexibility and inability to accommodate. Smith considered asking Employer more directly for its "recommendations" and specifically whether Smith should leave employment as part of a growth opportunity. We discussed Smith finding a mentor in his profession and he stated that he has one in mind. I did not, to the best of my recollection, inform Employer of this session, and his employer did not contact SAVE to inquire about whether Smith had attended.

The last session was on December 18, 2012. Smith arrived early to session, joined by his mother. I required his mother to execute the same confidentiality agreements and authorizations that Smith had previously executed. Smith appeared agitated and defensive. He indicated his mother was present as a "witness." Smith asked me to explain my role, my professional background, and to describe EAP services and my relationship with Smith's employer, which I did. I explained that EAP is neutral and my goal is to promote employer/employee satisfaction and productivity. Smith then reported that he was 'fired' that morning. Smith stated his intention to retain an attorney. The remainder of our session was not particularly productive.

I have had no further sessions with Smith.

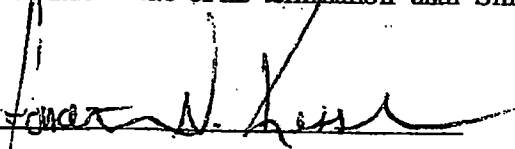
I did not speak with Smith's employer after October 23, 2012. Until this week, I was unaware of the reasons for Smith's termination. Employer recently produced Smith's employment file to my counsel, and which I have reviewed this week. Employer stated in those documents, and in a court affidavit, that Smith was terminated in December 2012 for disobeying certain directives relating to Smith's unauthorized involvement in hardware procurement. That particular issue was never mentioned to me by Employer or by Smith as a concern in the period of time I provided professional services. Nothing I did or said, or failed to do or say, had anything to do with Smith's termination.

Overall, I conclude that Smith had difficulty with interpersonal interaction, and had poor insight into that problem, and he instead focused on his sense of technical superiority and his need to leave a 'legacy' at Showa Denko Carbon, Inc. Smith received no such validation and upon his termination, he experienced abandonment. He perceived others to be the root cause of his problems. That attitude and behavior, in my opinion, similarly is what Smith is engaging in by suing me and blaming me and SAVE for his job termination.

Smith commenced a separate lawsuit against SAVE and Sarah Gainey, LPC with the similar allegations asserted as in the lawsuit he brought against me. That lawsuit against SAVE and Gainey was recently dismissed by the Court.

Smith commenced another separate lawsuit against Showa Denko Carbon, Inc. with allegations of wrongful termination, among others. That lawsuit was recently dismissed by the Court.

In my opinion, I have not deviated from any standard of care applicable to my professional EAP services, nor have I done anything improper or unethical. My limited communications with Smith's employer were proper in scope and were with Smith's express permission. My services to them appear to have no nexus to the reasons that Smith was terminated from his employment. I was not made aware of his termination until Smith told me, after that termination occurred.



Jonathan N. Kessler, LISW

7 28 16

Date