Haynsworth
Sinkler Boyd, P.A.

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February 28, 2017

VIA HAND DELIVERY
Jenny Abbot Kitchings
Clerk of Court
1200 Senate Street
Columbia, SC 29201

RE: Cynthia Holmes v. Haynsworth (3)
Appellate Case No. 2017-000266
HSB File: 04625.1439

Dear Ms. Kitchings:

I am writing in response to your letter dated February 23, 2017, requesting clarification as to whether Cynthia Holmes' ("Dr. Holmes") appeal falls under the category of filings prohibited by the Supreme Court's December 2, 2009 order prohibiting Clerks of Court in South Carolina from accepting further *pro se* filings from Dr. Holmes relating in any way to the revocation of her medical staff privileges at East Cooper Community Hospital ("East Cooper").

This appeal arises from orders entered in a malpractice case commenced on April 6, 2007 against Haynsworth Sinkler Boyd, Jamie Becker, and Manton Grier (collectively, the "Respondents"). The malpractice action arose from litigation Dr. Holmes commenced against East Cooper following the revocation of Dr. Holmes' medical staff privileges at the hospital. On Dr. Holmes' behalf, the Respondents unsuccessfully appealed for reinstatement of admitting privileges through East Cooper's administrative process and, later, filed a lawsuit in federal court. The relationship between Dr. Holmes and the Respondents deteriorated, and Dr. Holmes subsequently filed the malpractice action. After protracted litigation over Respondents' handling of her case against East Cooper, Dr. Holmes' claims against the Respondents were dismissed, and the trial court issued an order of sanctions against Dr. Holmes (the "Judgment"), which was affirmed by the South Carolina Supreme Court on June 4, 2014.

In November 2016, Respondents commenced formal efforts to collect the Judgment. As part of this effort, the Respondents filed their Verified Petition on January 3, 2017, in the Court of Common Pleas for Charleston County. Meanwhile, Dr. Holmes filed two motions for sanctions, a Rule 59(e) motion, a Rule 60 motion, and a motion to dismiss, all of which attempt to set aside the Judgment, reopen the malpractice action, and claim that the Respondents have acted fraudulently in trying to collect the Judgment. On February 9, 2017, the state court entered a judgment striking all

motions filed by Dr. Holmes because she filed the motions *pro se*, in violation of the Supreme Court's December 2, 2009 order. In response, Dr. Holmes, seeking to appeal the state court's ruling, filed her *pro se* notice of appeal (the "Notice") with this Court. Copies of the motions filed are enclosed with this letter.

Like the various motions Dr. Holmes filed with the state court, this Notice falls within the scope contemplated by the December 2, 2009 order. As stated above, the Judgment was issued based on Dr. Holmes' conduct during the malpractice action, which itself arose from the litigation Dr. Holmes commenced against East Cooper. Moreover, all of the motions struck by the state court attempted to set aside the Judgment obtained in that action or claim that the Respondents acted fraudulently during their collection efforts based on Respondents' actions with respect to her claim against East Cooper. Therefore, this Notice is simply Dr. Holmes' latest attempt to re-litigate the malpractice action arising from the East Cooper litigation and frustrate the Respondents' attempts to collect the Judgment awarded in the malpractice action. Accordingly, the Notice falls within the purview of the December 2, 2009 order, and, being filed *pro se*, was filed in direct violation of the Supreme Court's order.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,

Mary M. Caskey

cc: Cynthia Holmes (via U.S. Mail)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	NOTICE OF MOTION AND MOTION FOR SANCTIONS
Defendants.	

TO: Defendants and Defendants' Counsel

PLEASE TAKE NOTICE that the plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order for sanctions as to defendants and defendants' counsel pursuant to Rule 11, SCRCP, pursuant to S.C. Code Section 15-36-10, and/or pursuant to this Honorable Court's inherent authority regarding defendants' and/or defendants' counsel's false statements, misrepresentations, and *pro se* unverified petition made to this Honorable Court regarding order entered in this matter on January 13, 2016. Defendants and/or defendants' counsel knew or should have known the falsity of the statements. Despite knowing the statements

were false and/or misleading, defendants and/or defendants' counsel enticed this Honorable Court to rely on the material misstatements and thereby perpetrate fraud upon the Court. Moreover, Defendants blatantly and wrongfully attempt to "Judge shop" as another Circuit Court Judge has already signed the Order on January 3, 2017, and one Circuit Court Judge does not have the authority to overrule another Circuit Court Judge, thereby, voiding the unauthorized "Judge Shopping" second Order on January 13, 2017, due to, including but not limited to, lack of jurisdiction. Further, on information and belief, untrustworthy *pro se* Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that they had presented the same Order to another Judge who had already signed it. Defendants have unclean hands. This motion is based on grounds of defendants and/or defendants' counsel's wrongdoing and material misstatements, including but not limited to defendants' unverified *pro se* petition pursuant to statutory and case law, affidavit(s), and evidence to be presented at the motion hearing on this matter.

This motion will be based on the pleadings, discovery, proposed orders, and/or other documents regarding wrongdoing by defendants and/or defendants' counsel and affidavit(s) as well as Memorandum of Law.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 1/23/17

S/

C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	NOTICE OF MOTION AND MOTION FOR SANCTIONS
Defendants.	

TO: Defendants and Defendants' Counsel

PLEASE TAKE NOTICE that the plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order for sanctions as to defendants and defendants' counsel pursuant to Rule 11, SCRCP, pursuant to S.C. Code Section 15-36-10, and/or pursuant to this Honorable Court's inherent authority regarding defendants' and/or defendants' counsel's false statements, misrepresentations, and *pro se* unverified petition made to this Honorable Court regarding order entered in this matter on January 3, 2016. Defendants and/or defendants' counsel knew or should have known the falsity of the statements. Despite knowing the statements were false and/or misleading, defendants and/or defendants' counsel enticed this

Honorable Court to rely on the material misstatements and thereby perpetrate fraud upon the Court. This motion is based on grounds of defendants and/or defendants' counsel's wrongdoing and material misstatements, including but not limited to defendants' unverified *pro se* petition pursuant to statutory and case law, affidavit(s), and evidence to be presented at the motion hearing on this matter.

This motion will be based on the pleadings, discovery, proposed orders, and/or other documents regarding wrongdoing by defendants and/or defendants' counsel and affidavit(s) as well as Memorandum of Law.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 1/12/17

C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

STATE OF SOUTH CAROLINA	)IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	)
Plaintiff,	)
-vs-	)
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	) MOTION TO DISMISS
Defendants.	)

The plaintiff respectfully makes this motion to dismiss defendants' pro se, so-called verified petition and pleading filed on or about the 21st of December 2016, which we just received. Defendants' pro se petition does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure and it should be dismissed. Moreover, the pro se petition is false, contains material misstatements of fact, and is not properly supported or verified. Strict compliance with the rules and statutes is required. Because defendants' pro se pleading materially fails to comply, it fails for lack of jurisdiction as well. The grounds for said motion are substantial justice affecting substantial rights and such other and further grounds as may be presented at the hearing. This Motion is based upon the S.C. Rules of Civil Procedure, statutory and case law, the record herein, memoranda which may be submitted, and evidence to be presented at the hearing.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 12/28/16

C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	CERTIFICATE OF SERVICE
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

The undersigned hereby certifies that a copy of the foregoing motion was served upon the attorney for all Defendants on this date by deposit in the U.S. Mail with sufficient postage thereon to ensure prompt delivery as follows:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated 12/28/16

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	RULE 60, SCRCP, MOTION
Defendants.	

To Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 60, SCRCP.

Rule 60, SCRCP, provides that the court may relieve a party from a judgment or order. That Rule provides as follows:

Rule 60, SCRCP - Relief From Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Grounds for the motion include, but are not limited to, those which follow. By analogy, under the Federal Rules of Civil Procedure, Rule 60 may be used to reconsider legal issues, and Rule 60(b)(1) specifically provides that the court may relieve a party from an order for reasons of its own mistake or inadvertence. *See Kingvision Pay-per-View Ltd. v. Lake Alice Bar,* 168 F.3d 347, 350 (9th Cir. 1999). "The word 'mistake' in Rule 60(b) has been read to include mistakes by the court. *See, e.g., Tarkington v. United States Lines Co.,* 222 F.2d 358 (2d Cir.1955)." *McQuatters v. Town of Irmo Corp.* (D.S.C., 2012), Case No. 3:10-1375-CMC-PJG, January 3, 2012. South Carolina Rule of Civil Procedure 60(b)(1) provides that upon motion, the court may relieve a party from a final judgment for "mistake, inadvertence, surprise or excusable neglect." *Thompson v. Hammond,* 299 S.C. 116, 382 S.E.2d 900 (S.C., 1988). As one example, application of the improper legal standard under the inapplicable revised FCPSA is a mistake warranting

reconsideration and relief. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011). In addition, under Rule 60(b)(2), SCRCP, there is newly discovered evidence supporting this motion which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCP. Further, there is misrepresentation, and/or other misconduct of an adverse party warranting relief under Rule 60(b)(3). As just one example, despite plaintiff's timely objections, defendants wrongfully misrepresented that the wrong statute applied. Moreover, the revised FCPSA is pending constitutional challenge on its face and as applied. To the extent the judgment is based on, adversely affected by, and/or prejudiced by that unconstitutional statute, the judgment is void under Rule 60(b)(4), SCRCP. In addition, by analogy, the recent case of *Conquista Consultoria E Assessoria Empresarial Ltda v. Iguacu, Inc.*, provides, "It has long been the case that 'the jurisdiction of the court depends upon the state of things at the time of the action brought.' *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance,* 9 Wheat 537, 539, 6 L.Ed. 154 (1880)." *Conquista Consultoria E Assessoria Empresarial Ltda v. Iguacu, Inc.* (N.D. Cal., 2015), Case No. 11-cv-00602-RS, July 6, 2015. As such, controlling precedent in *Southeastern Site Prep* confirms that the revised FCPSA is inapplicable which resulted in error of law and/or lack of subject matter jurisdiction, thereby voiding the judgment. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011). Pursuant to Rule 60(b)(5), SCRCP, a prior judgment upon which the judgment herein is based has been reversed or otherwise vacated which justifies Rule 60 relief, including but not limited to the following. Over plaintiff's timely objections, defendants wrongfully induced this

Honorable Court to rely on a prior sanctions order in unrelated matter which was not final and which was then pending appeal. Plaintiff is prejudiced because controlling precedent has now overturned that order. Accordingly, that prior wrongful revised FCPSA order erroneously formed a basis, if not the basis, for the order herein, thereby warranting relief under Rule 60. Finally, for substantial justice affecting substantial rights, including but not limited to the reasons stated, it is no longer equitable that the judgment should have prospective application. Rule 60(b)(5), SCRCP.

These are matters of public importance, including but not limited to, due process and Justice Hearn's failure to recuse after wrongfully denying the plaintiff's right of direct appeal in the Court of Appeals based on the wrongful sanctions, monetary and non-monetary, in the appeal of that very order. Justice Hearn, as the participating former Court of Appeals judge, was thereby conflicted but wrongfully denied motion to recuse without comment and without enough specificity for meaningful judicial review. Moreover, the constitutionality of the revised S.C. Code Ann. Section 15-36-10 is pending appeal. That statute incorporates a reasonable attorney standard, which is not reasonable notice to the layperson or affected parties. Further, the revised S.C. Code Ann. Section 15-36-10 is constitutionally flawed including deprivation of right to full and fair hearing at trial by jury. See *Pond Place Partners, Inc., v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (the trial court found that a trial on the frivolous proceedings depended on the resolution of the underlying legal cause of action **after appeal**). "It has been decided by this court too often to require citation of the cases that a plaintiff cannot, by framing his complaint so that his action would, under the old procedure, be one cognizable only by a court of equity, select the forum in which the issue shall be tried, and thereby defeat a defendant's constitutional

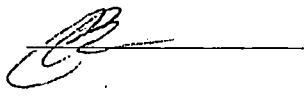
right of trial by jury." *Southern Ry v. Howell*, 89 S.C. 391, 71 S.E. 972 (S.C., 1911). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory law, case law, and Constitutional law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests relief pursuant to Rule 60, SCRCP.

Respectfully submitted,

Dated August 3, 2015.



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	
-vs-	NOTICE OF MOTION AND RULE 59(e), SCRCP, MOTION
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

To Defendants:

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order to alter or amend the order entered January 18, 2017, with notice postmarked January 20, 2017, and received January 28, 2017.

The Plaintiff respectfully makes this motion pursuant to Rule 59(e), SCRCP, regarding the order, and requests that all time limits be held in abeyance pending resolution of this motion. Defendants *pro se*, so-called verified petition is false and is disputed.

This case is a suit for professional negligence wherein the Federal District Court ruled that Defendants wrongfully failed to timely appeal Defendant's negligent loss of injunction resulting in damages, thereby committing malpractice. See attached Federal District Court Order.

At trial, Defendants failed to extend professional courtesy for Plaintiff's trial counsel, who was in out-of-state court, to appear. The trial proceeded at Defendant's self-serving insistence without opposing trial counsel. At trial, Professor John Freeman testified under oath before the jury that what Defendants did when they threatened to prejudice the case in order to extract fees was "unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that." See attached Trial Transcript excerpt of Professor John Freeman's testimony. A jury could and should reasonably find that the negligent and/or criminal acts are a breach of the standard of care. Despite the obvious questions of fact, the jury was denied the right to find the facts when directed verdict was wrongfully granted by a retired judge. Because retired judges have no support staff, the retired judge essentially allowed Malpractice Defendants to write their own order. Consequently, that order does not reflect the record or reality. Transcript available upon request. Moreover, Defendants materially fail to disclose differing findings by the appellate courts. See attached Transcript Excerpt of Oral Argument by the Physician's Trial Counsel who was unfairly denied the opportunity to appear at trial.

Thereafter, Defendants misrepresented that the wrong statute applied and filed a motion for sanctions. But for the unconstitutional retroactive application of the amended S.C. Code Section 15-36-10, we would not be here. Any well-trained Physician would and should adamantly object.

The South Carolina Rules of Court shall be construed to do substantial justice. Though no deadline was imminent, Defendants chose to mail a copy of the *pro se*, so-called verified petition to the Physician on December 19, 2016, just in time for the Christmas Holidays with family and friends. Defendants, bless their hearts, are real sweethearts. Defendant's *pro se* petition does not comply with the South Carolina Rules of Court. Moreover, the *pro se*, so-called verified petition is disputed,

contains material misstatements of fact, and is not proper, not itemized, and not verified. Strict compliance with the South Carolina Rules of Civil Procedure, statutory, and case law is required for summary application. Defendants did not counterclaim thereby waiving it, if any. The Physician is not the Defendant. The matter herein is incidental to the underlying claim. Defendants have unclean hands, and the Plaintiff respectfully submits Defendant's *pro se*, so-called verified petition should be dismissed or stricken.

I. One Circuit Judge has no power to change, alter, review, revise or reverse the action of another Circuit Judge

Rule 43(l), SCRCP , provides, "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." "This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st rule *(now Rule 43(l), SCRCP)* of the Circuit Courts, which declares that 'if any application for an order be made to any judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it **shall be revoked**'...(*A*) judgment of the Court of Common Pleas... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one Circuit judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis

supplied); *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). Defendants attempt to "Judge Shop." Further, on information and belief, untrustworthy pro se Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that the exact same Order on the exact same facts had already been adjudicated by another Circuit Court Judge. Untrustworthy *pro se* Defendants have unclean hands. Accordingly, the order entered January 18, 2017, "shall be revoked." See *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another.").

II. The failure to support the rule to show cause by verified petition is a fatal defect.

The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). See sample Verification attached. Though captioned as "verified petition," defendant's *pro se* petition does not contain a verification and does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure. Pursuant to Rule 9(i), SCRCP, verification of account is required and Rule 11(c), SCRCP, specifies that the verification or affidavit shall be sworn to or affirmed before an officer authorized to administer oaths. *BB&T v. Fleming*, 360 S.C. 341, 601 S.E.2d 540 (2004). Further, when a motion is to be supported by affidavit or sworn itemized statement, it "SHALL be served with the motion." Rule 6(d), SCRCP. Moreover, the *pro se* petition is false and is disputed. It contains material misstatements of fact and is not itemized, verified, or proper. Strict compliance with the rules and statutes is required for summary application. The plaintiff respectfully submits defendant's *pro se*, so-called verified petition should be dismissed or stricken.

III. Defendants proposed order entered January 3, 2017, is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals and application of the rule of law.

Defendant's proposed order is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal et al., *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. Defendant's brazen assertion that Defendants are somehow exempt from the South Carolina Appellate Court Rules and the South Carolina Court of Appeals characterizes the way Defendants have proceeded in this professional negligence action all along, i.e., the rules do not apply to them. Defendant's *pro se* unverified petition should be dismissed or stricken.

IV. There is no jurisdiction due to pending Rule 60, SCRCP, Motion.

The pending Motion Pursuant to Rule 60, SCRCP, was filed before Defendant's unverified, false petition and is pertinent thereto. Pursuant to Rule 79(e), SCRCP, Petitioner requests hearing on that motion. There is no jurisdiction due to pending Rule 60, SCRCP, Motion. Even assuming jurisdiction, resolution of the Rule 60, SCRCP, Motion as a prerequisite is reasonable. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

V. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment.

This matter is incidental to the case and does not constitute a traditional money judgment. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. Summary application applies to traditional judgments where the party has been afforded the right to trial by jury. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (*to show cause*), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). Defendants did not counterclaim, thereby waiving any. The Physician is not the Defendant, and the matter herein is incidental. Defendants *pro se*, unverified, false petition should be dismissed.

VI. A novel question is raised of constitutionality of summary application by rule to show cause to amended S.C. Code Section 15-36-10 and/or incidental matters.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of the right to trial by jury. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, deprivation of right to full and fair hearing at trial by jury, deprivation of right to neutral fact-finder where the scales of justice are tipped in favor of untrustworthy Defendants who are officers of the court, and the amended S.C. Code Section 15-36-10 statute's reasonable attorney standard is not reasonable notice to the layperson or affected parties. Accordingly, the statute is null and void, and Defendants summary application should be dismissed. *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

VII. A novel question is raised of constitutionality of summary application by rule to show cause in amended S.C. Code Section 15-36-10 and/or incidental matters due to denial of due process and lack of determination on ability to pay.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of due process including but not limited to failure to determine reasonableness and ability to pay. *See*

Turner v. Rogers, 564 U.S. 431 (2011). The Physician asserts there was no counterclaim, and even assuming there was, Defendants waived it. The Physician is not the Defendant. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, denial of due process and failure to determine reasonableness and ability to pay. Accordingly, summary application by rule to show cause is not applicable and/or is unconstitutional and should be dismissed. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

This Motion is based on constitutional (federal and State), statutory, and case law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned requests that defendants comply with the Rules of Court prohibiting ex parte contacts by forwarding hard copy of any and all communication with the Court regarding this matter whether electronic, fax, email, verbal, or other, and the plaintiff respectfully requests this Honorable Court grant this motion.

Respectfully submitted,

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

Bank of America

Cashier's Check No. 0912453

30 - 1 / 1140 · 40-14-0003B 7-1999

Date

CHARLESTON CHARLESTON-200 MEETING STREET 02-01-00

Pay To The Order Of **BILL BOYD** $ *****43,000.00**

If this check is not returned for cancellation by the remitter or presented for payment by the payee or an endorsee within one year after its date, it will be subject to a nonrefundable dormancy fee of $5.00 per month thereafter.

FORTY THREE THOUSAND AND 00/100 Dollars

NOT VALID IF OVER $43,000.00

For 72900 004 071129 02-01-00 12:57 OFFICIAL CK SALE $43,000 Non-Negotiable

Authorized Signature

Bank of America, N.A.
San Antonio, Texas
071129

CYNTHIA HOLMES HD
Remitter (Purchased By)

001641000116

Customer Copy
Retain for your records

ENDORSE CHECK HERE

X For Deposit Only
acct of Sinkler & Boyd, P.A.
by [illegible] Boyd

FOR DEPOSIT ONLY Sinkler & Boyd, P.A.
SINKLER & BOYD, P.A.

DEPOSITORY BANK ENDORSEMENT

03152323

ENDORSE CHECK HERE

x For Deposit Only
Acct of SINKLER & Boyd, P.A.
by Bill Boyd
FOR DEPOSIT ONLY Boyd P.A.
SINKLER & BOYD P.A.

DEPOSITORY BANK ENDORSEMENT

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of _____)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

_____

SWORN to and subscribed before me this _____ day of _____, _____.

_____ (L.S.)
Notary Public

My Commission Expires: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D.,

Plaintiff,

v.

Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc.,

Defendants.

C.A. # 2:99-833-23

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).[1]

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED.

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 14, 2000

2

[1] Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

J. DOE (C. HOLMES)
PLAINTIFF
vs.
MANTON GRIER, JAMES Y. BECKER, HAYNSWORTH SINKLER & BOYD, PA,
DEFENDANTS

PARTIAL
TRANSCRIPT OF RECORD

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

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

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE -- ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

C. Holmes, M.D.,)
Appellant,)
)
vs.)
)
Haynesworth Sinkler Boyd, P.A.,)
successor to Sinkler & Boyd, P.A.,)
Manton Grier, and James Y. Becker,)
Respondents.)

LOWER COURT NO. 02-CP-10-1448
AND AFTER CHANGE OF VENUE NO. 07-CP-10-1444

APPELLATE CASE NO. 2010 - 154986

* *

TRANSCRIPT OF APPEAL HEARING

* *

BEFORE THE SOUTH CAROLINA SUPREME COURT
THE HONORABLE JEAN HOEFER TOAL, CHIEF JUSTICE
THE HONORABLE COSTA M. PLEICONES, JUSTICE
THE HONORABLE KAYE G. HEARN, JUSTICE
THE HONORABLE JOHN W. KITTREDGE, JUSTICE
THE HONORABLE DONALD W. BEATTY, JUSTICE

CHALMERS JOHNSON: Thank you. Chief Justice Toal, Justices of the Supreme Court, my name is Chalmers Johnson. I'm here, um, representing Dr. Cynthia Holmes today. In this appeal, we're asking, uh, that the court overturn an order which granted a directed verdict against her on claims of professional negligence and others that were against her former attorneys, Mr. Grier, Mr. Becker, and Haynesworth, um, Sinkler & Boyd. We'll also be addressing an order which granted sanctions after that trial against Dr. Holmes for instituting a frivolous lawsuit.

CHIEF JUSTICE JEAN TOAL: Go ahead.

CHALMERS JOHNSON: Thank you, Your Honor. Directed verdict should not have been granted in this case. Um, I know we have a huge record on appeal, and just a -- a laundry list of issues, which I hate to do in any appeal, but if I do nothing else today, it's my goal to focus your attention on fifty pages of the record on appeal, and on one piece of extra testimony from the trial. The particular pages that I hope that you will pay attention to are pages 1509 to 1560. These fifty pages, which are exhibits from the trial, present a succinct chronology of events and provide evidence of a duty, a negligent breach of that duty, damages, and causation.

JUSTICE JOHN KITTREDGE: I don't want to interrupt the flow of your argument, Mr. Johnson, but why isn't this case over on the statute of limitations issue?

CHALMERS JOHNSON: Your Honor, the statute of limitations issue only applies to the two individual defendants. So even if it was found that they were not ---

JUSTICE JOHN KITTREDGE: Well, as to them?

CHALMERS JOHNSON: Okay. As to them, Your Honor, our argument is that they availed themselves of the court to the point where they should have -- the court should have considered to have personal jurisdiction over them within the time period of the ---

JUSTICE JOHN KITTREDGE: So ---

CHALMERS JOHNSON: --- statute of limitations.

JUSTICE JOHN KITTREDGE: So coming -- coming to court and submitting to the jurisdiction of the court waives a party's ability to assert affirmative defenses?

CHALMERS JOHNSON: It doesn't necessarily waive the right

to af-, assert affirmative defenses, Your Honor, but as to personal jurisdiction and when the court has personal jurisdiction, I don't think that South Carolina recognizes a special appearance, and especially when you go so far as to actually defend the case at trial and obtain a directed verdict. You've certainly availed yourself of the court, shown up, and, um, evidenced your receipt of notice of the case and your time to prepare.

JUSTICE JOHN KITTREDGE: I -- I understand that in the context of being able to subsequently assert a jurisdictional challenge, but I don't understand how an appearance forecloses a party's ability, uh, to assert affirmative defenses, including statute of limitations.

CHALMERS JOHNSON: Uh, it wouldn't, Your Honor. The only way -- the only argument I have on that is to come at it from a personal jurisdiction standpoint, and I think you put your finger right on it; I won't belabor the point any. Um, the best argument I can come up with is that they've availed themselves of the court. I think that the court had personal jurisdiction over them from the very beginning, which would have been within the statute of limitations. Um, and that's -- that's how I come at that, Your Honor.

CHIEF JUSTICE JEAN TOAL: Let's go to what you would like us to focus on, pages, uh, 1509 to 1560.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: They include, as it looks like to me from just a brief look, the initial engagement letter, uh, the addenda, uh, uh, to that engagement letter, uh, and certain other pleadings surrounding the order of Judge Duffy.

CHALMERS JOHNSON: Yes, Your Honor.

CHIEF JUSTICE JEAN TOAL: Uh, is that correct?

CHALMERS JOHNSON: That's correct, Your Honor.

CHIEF JUSTICE JEAN TOAL: Alright, sir. Uh, go forward and tell us what is succor about those ---

CHALMERS JOHNSON: Thank you.

CHIEF JUSTICE JEAN TOAL: --- documents.

CHALMERS JOHNSON: Here's what I want to focus on. This case is -- you know -- we're actually in front of you in this

very case later this year, I believe, or next year. Um, it has involved a lengthy process, with lots of different things happening. This case, if we want to actually make a case that Judge Houston should have seen, was about the injunction. Dr. Holmes was able to, um, obtain and injunction, which allowed her to continue with doing surgeries.

JUSTICE KAYE HEARN: And she did no surgery during the course of that injunction, isn't that correct?

CHALMERS JOHNSON: Correct, Your Honor. The junction was granted at the end of November, and the, uh, injunction was reversed in January. So ---

CHIEF JUSTICE JEAN TOAL: And, of course, why, the standard for keeping such an injunction in place, uh, is both the, uh, harm that might ensue, uh, as, uh, before the case is tried, as well as likelihood of success on the merits, and I guess that's where, if you can get past the fact that, uh, she's, uh, not demonstrated that her practice was really hurt because she didn't admit anybody, uh, you've got the, uh, ruling by Judge Duffy on the merits, uh, affirmed by the Fourth Circuit, cert declined by the Supreme Court, and then fully explicated again by Judge Pieper in his order dismissing the antitrust, uh, uh, uh, and allied, uh, causes, uh, in

State Court. Those are the causes -- those two federal causes are those that would support that injunction. Uh, so if on the merits, according to the various judges I recited, she is not entitled to any relief, then what Haynesworth, Becker, and Grier did or did not do in pursuing the preliminary junction really doesn't make any difference, does it?

CHALMERS JOHNSON: I think it makes -- I think that is the case, Your Honor. Uh, not -- not that you're correct, but I think it is our case that she lost the injunction and her damages ensued from that. You can ---

CHIEF JUSTICE JEAN TOAL: Well, I understand that, but the -- the -- it's not just that simple. Just because she lost the injunction doesn't mean she would be entitled to damage had she suffered any damages, and that's another big issue, as to whether this record discloses any damages, uh, uh, since she didn't admit any patients during the time she definitely had the injunction. Uh, it's arguable that she suffered no damages. Uh, if that -- but beyond all that, if she had suffered some damages in the sense that, uh, she had lost the opportunity to admit patients, if she wasn't entitled to the injunction in the first instance, how in the world does it make any difference that the preliminary injunction was dissolved?

CHALMERS JOHNSON: She was entitled to the injunction in the first instance. The judge ---

CHIEF JUSTICE JEAN TOAL: She really wasn't. Uh, that's the ruling that all the federal courts have made. The entitlement is not just because of, uh, harm, it's because you have a likelihood of success on the merits. As it develops, she had no likelihood of success on the merits.

CHALMERS JOHNSON: Your Honor, ---

CHIEF JUSTICE JEAN TOAL: None.

CHALMERS JOHNSON: Your Honor, I -- I respectfully disagree. The federal court only granted partial summary judgment. It dismissed the remainder of her state claims.

CHIEF JUSTICE JEAN TOAL: The state court claims are not involved with this preliminary injunction. The preliminary injunction is purely involved and is purely bottomed on the federal action, what you're talking about.

CHALMERS JOHNSON: Right, Your Honor. And at the end of this, um, set of papers, you'll see Judge Duffy, um, correctly

recognizes that -- I mean, this injunction had only been in place for about six or seven weeks. He collec-, correctly recognizes that Dr. Holmes had four surgeries scheduled for the next, uh, month or two, and he tell-, p-, tells her, "You better cancel your surgeries and do something about it." On the very next day, she gets her letter from the hospital cancelling all four surgeries.

CHIEF JUSTICE JEAN TOAL: Well, that -- of course that is what happened, but, again, what he also tells her very definitively is that she was never entitled to the injunction to begin with because her entitlement has to be bottomed on likelihood of success, and she did not have a viable cause of action for the federal causes.

CHALMERS JOHNSON: And, Your Honor, that's so, but she would have ---

CHIEF JUSTICE JEAN TOAL: Well, if that's so, end of conversation.

CHALMERS JOHNSON: She would have had the four surgeries done and collected the money for them. I think she has damages.

CHIEF JUSTICE JEAN TOAL: No, sir. That -- the fact that she might or might not have is not the inquiry. The inquiry on damages is going to be whether she was entitled to it, not whether she could have gotten a windfall if it had stayed in place. Her entitlement is based on the legitimacy of that federal action.

CHALMERS JOHNSON: Your Honor, I think her entitlement to perform the surgeries was based on the fact that the judge did grant her the injunction. The reason that the injunction was lost is why this case shouldn't have been thrown out.

CHIEF JUSTICE JEAN TOAL: Well, I -- I think we understand your position on that.

JUSTICE JOHN KITTREDGE: Let me -- let me use that comment to ask you about this professional negligence claim. What should her attorneys have done differently? How should they have performed differently that would have likely changed the results?

CHALMERS JOHNSON: They should have spent their time between the injunction and the loss of the injunction responding to discovery, which was already overdue at the time the discov-, the injunction was granted, and listening to

Judge Duffy, who told them that they better stick to the scheduling order, which they didn't, and that's why Judge Duffy undid the injunction, and they should not have generated thirty-five pages of dickering with their client about fee renegotiations, including ---

CHIEF JUSTICE JEAN TOAL: Well, she's the one that generated that by taking the completely unsubstantiated position by anything that's in this record that she had an entitlement to a contingent fee arrangement. That was the source of the disputation, and every piece of written material here, except a letter she sent saying, uh, uh, that she had received a phone conversation different, which is just another piece of self-serving information on her part. There is no independent writing between the parties that supports anything other than a fee-based arrangement.

CHALMERS JOHNSON: Actually, Your Honor, uh, one of those letters that I have referred you to, Haynesworth actually offers a contingency fee agreement.

CHIEF JUSTICE JEAN TOAL: Which one is that? Show me specifically in the record.

CHALMERS JOHNSON: Let me find it, Your Honor. It is

letter #3, January 10th, 2000. Page 1523. In this one, Haynesworth asked for $3,000 in advance for costs, $40,000 advance fee for attorneys fees that will cover until the end of trial, ---

CHIEF JUSTICE JEAN TOAL: No, the -- that $43,000 was not advanced -- covered the end of trial. They had suffered a good deal of lost fees that she had never paid them, and the $43,000, as I understand it, was an attempt to calculate what was past due, and they said, "We will take this $43,000, we will not insist in anything more until the end of trial," but the arrangement is a fee-based one. Where in this letter does it talk about contingent fees?

CHALMERS JOHNSON: They mention in the letter, on page 1523, they offer -- if the case is -- if they recover over $150,000, Haynesworth wants twenty percent of that. So they actually offer her a contingent fee at some point.

CHIEF JUSTICE JEAN TOAL: Alright. But, again, sh-, show me exactly where you are.

JUSTICE COSTA PLEICONES: You're on 1523?

CHIEF JUSTICE JEAN TOAL: Yes, sir. Show -- show me ---

CHALMERS JOHNSON: Yes, Your Honor. Let me flip ---

CHIEF JUSTICE JEAN TOAL: --- exactly where you are.

CHALMERS JOHNSON: --- to the page myself.

CHIEF JUSTICE JEAN TOAL: I'm looking straight at 1523, and I no-, notice in the second paragraph, "We have clarified, and you understand, that we are not currently representing you on a contingent fee basis. We explored and considered that possibility, but the nature of your case precludes this as a viable option." That's in the -- and then they repeat that, "For all business actio-, aspects of our legal representation, the terms of our engagement letter dated May the 5th, 1998, will control, except that they may be modified by a subsequent writing." Now, show me the ---

JUSTICE DONALD BEATTY: You're on 1526?

CHALMERS JOHNSON: Correct, Your Honor; sorry. It was the end of that letter. I -- I apologize. I wrote down the beginning of the letter to mark it for myself. It starts with the, "With this narrowed focus of discovery and legal claims," underlined, and at the end they say, "Haynesworth will receive ---"

CHIEF JUSTICE JEAN TOAL: "We agree to limit or cap your legal fees through the conclusion of the trial at $40,000 in additional fees."

CHALMERS JOHNSON: Correct. So that was the advanced ---

CHIEF JUSTICE JEAN TOAL: "That's a cap ---

CHALMERS JOHNSON: --- payment.

CHIEF JUSTICE JEAN TOAL: "--- on additional fees to try the case. It is possible that your additional legal fees will be less than that amount, but we can't guarantee it. In the event that any recovery of damages through settlement of trial exceeds $150,000 exclusive of a fee award by the court, you agree that Sinkler & Boyd will receive twenty percent of the excess recovery in addition to its fees as set forth above."

CHALMERS JOHNSON: That's a contingency fee, Your Honor.

CHIEF JUSTICE JEAN TOAL: Right. Now, uh, where did she sign accepted?

CHALMERS JOHNSON: She did not. The question that Your Honor posed to me, in -- in fact, I think stated to me, was

that there was no evidence whatsoever that there was any discussion of a contingency fee.

CHIEF JUSTICE JEAN TOAL: No -- no. I did not say that, but if I -- if you think I did, let me clarify what I'm asking you. There is no evidence in this record that the parties reached a written agreement as to a contingent fee arrangement.

CHALMERS JOHNSON: Oh, that's correct.

CHIEF JUSTICE JEAN TOAL: That is correct, right?

CHALMERS JOHNSON: Correct.

CHIEF JUSTICE JEAN TOAL: Okay.

JUSTICE JOHN KITTREDGE: And at best, this is just a hybrid. I mean, uh, -- because in December, I think it was December 15th, they wrote a letter. Categorically said no contingency fee. This is, uh, -- shortly thereafter, apparently, communication back and forth, and to placate the client, um, they're still going to bill $40,000 up to through the conclusion of the trial and thereafter.

CHALMERS JOHNSON: Right. It's a very twisted set of events. If you read the letters that I've pointed to you, you can follow it. I actually had to do that on note cards to figure out where they were going with this, but it's a back and forth. She -- in the beginning, it's very clear. I'll just boil it down. She believed that they were going to have a contingency fee afterwards. She says that was based on a discussion with Becker. In the very first letter here, on the, 1509, Becker's writing her, saying, "I'm so sorry you misunderstood. What I was really telling you is that I would run a contingency fee by my partners and see if they would agree to it." But guess what, they didn't agree. Then you get in this big fight between the two of them, and guess what, the law firm spends all its time and energy and effort fighting with this client, trying to renegotiate its fees, while ---

CHIEF JUSTICE JEAN TOAL: Well, we get -- we get into this issue about the fee, uh, because of your assertion, uh, in answer to Justice, uh, Kittredge's question, "What should Haynesworth have done," that there shouldn't have been all this back and forth about fees. Well, there was a good deal of back and forth because of, uh, her, uh, beliefs, not supported by any of the written documents, uh, that they would have signed together about this contingent fee arrangement.

So you say that's one thing they should have done. Would that -- that -- that fuss back and forth, uh, uh, accomplished what in terms of making them liable for, uh, professional negligence?

CHALMERS JOHNSON: They missed every single deadline for discovery, and the judge withdrew the, uh, injunction as a result. They also failed to file a response to a motion to dissolve the injunction in federal court, which, if you don't file within fourteen days, the court considers that -- can consider that consent.

CHIEF JUSTICE JEAN TOAL: If she were never entitled to an injunction, why did that matter? That's, I think, what's being asked here.

CHALMERS JOHNSON: Your Honor, I -- the question -- I think the question is what could the jury have found because this is a directed verdict, and if there's some -- (indiscernible) of evidence to support my claim that a jury could have found that the reason she lost this injunction is because her attorneys were not doing their job and were dickering with her over fees instead, that we might have won this case, especially when John Freeman said ---

CHIEF JUSTICE JEAN TOAL: The jury would not have been permitted to make that finding if, in the first instance, she were never entitled to the injunction. Am I not right?

CHALMERS JOHNSON: I don't believe so, Your Honor. She got the injunction whether she was entitled to it or not. Her attorneys did a good job to get it. They should have kept it.

JUSTICE JOHN KITTREDGE: What's the effect, if any, maybe not, what -- is there any effect or relevance to the plaintiff not availing herself of the purposes for which the federal court issued the injunction in the first place?

CHALMERS JOHNSON: Your Honor, I fail to -- I don't understand why people keep saying that, that she never did any surgeries. It was only in place for six or seven weeks. She had four surgeries set for February and March.

CHIEF JUSTICE JEAN TOAL: No, she never made any attempt until right at the end, uh, to -- when she was on a pro se status to set any surgeries. They weren't even -- those surgeries, uh, were set way at the end, uh, after Judge Duffy, uh, uh, had that status conference. Uh, uh, what she'd been advised is, uh, from what I understand the record to be, as soon as that injunction was obtained, she was advised by her

attorneys, "Immediately start scheduling some surgeries so that you will be able to show the court, uh, that, uh, uh, this is necessitous to keep in place." This thing was on a rocket docket, uh, she had not really put it -- put forth any substantial information about, uh, what it would take to get the preliminary injunction, so the advise was, "We've got this on a very hurried basis, you need to go on and schedule some surgeries." That's why it's being asked.

CHALMERS JOHNSON: And, Your Honor, the answer is page 1464, a letter of January 26th, the day after the preliminary injunction which dissolved from East Cooper Hospital specifically cancelling four scheduled surgeries. She must have had those surgeries scheduled before the preliminary injunction was dissolved, otherwise East Cooper wouldn't have sent her that letter dissolving them. Judge Duffy also recognizes that she had four at the hearing and tells her she's going to have to cancel them. I think there is sufficient evidence for the jury to find that she lost something. Thank you, Your Honors.

CHIEF JUSTICE JEAN TOAL: Alright. Mr. Johnson, you have been asked a lot of questions, and you have a lot of issues. Uh, I don't want you -- you, of course, are going to have some time on reply.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 07-CP-10-1444
J. Doe(CHolmes),	
Plaintiff,	CERTIFICATE OF SERVICE
-vs-	
Manton Grier, James Y. Becker, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.	
Defendants.	

FILED
2017 FEB -1 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I hereby certify that a copy of the foregoing was timely forwarded to the presiding judge and was served on defendants' counsel of record via USPS, postage pre-paid:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated January 28, 2017

C. Holmes
PO Box 187
S.I., SC 29482
843.883.3010

1 of 2

Fax: 843.958.4434

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: 07-CP-10-1444
Doe(CHolmes) v. Becker et al

Dear Ms. Armstrong:

Enclosed for filing is a Motion with abeyance request and Proof of Service in the above case. Also, enclosed please find the filing fee, motion cover, and a SASE for return of the file-marked copy.

Thanking you in advance for your kind consideration, I am

Very truly yours,

cc

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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VIA HAND DELIVERY
Jenny Abbot Kitchings
Clerk of Court
1200 Senate Street
Columbia, SC 29201