C. HOLMES, M.D.
P.O. Box 187
Sullivans Island, SC 29482
843.883.3010

24 May 2017

Fax: 803.734.1839

The Honorable Jenny Kitchings
South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

Re: Holmes v Becker et al
App. Case No. 2017-000266

Dear Jenny:

Thank you for your correspondence dated May 18, 2017. In response, it is respectfully submitted that *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527, 527 (2012), is not dispositive. Specifically, the *Miller* case, *supra*, is distinguishable because in that case the party was represented by counsel of record in the lower court, whereas, in this case, both sides appeared *pro se* in the lower court. As such, counsel of record for the appeal would not be expected to have personal knowledge of receipt of written notice of entry of the order. Accordingly, the *Miller* case, *supra*, does not apply because, in this case, written notice of entry of the March 14, 2017, order was postmarked March 16, 2017 (copy attached), and was received by the appellant on March 24, 2017.

In addition, *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527, 527 (2012), is not dispositive because the document is not a "substantive document." "The distinction between substantive and procedural

laws is relatively clear. If a statute simply prescribes the method—the 'legal machinery'—used in enforcing a right or a remedy, it is procedural." *Urbach v. Okonite Co.* (Mo. App., 2017) (internal citations omitted). "The distinction between substantive law and procedural law is that substantive law relates to the rights and duties giving rise to the cause of action." *Id.* Significantly and materially, the affidavit relates to Rule 203, SCACR, not the merits of the appeal, therefore, it is procedural. As a result, *Miller, supra*, does not prohibit it.

Furthermore, pursuant to Rule 203(b), (d), SCACR, serving and filing are two separate acts. Service herein was timely thereby vesting jurisdiction in the appellate court. Toal *et al, Appellate Practice in S.C.*, (2016), p. 289. Pursuant to Rule 263(b), SCACR, the filing of the notice of appeal may be extended. *Pro se* defendants have acknowledged timely service of notice of appeal. There is no legal prejudice and *pro se* defendants have claimed none. The return fails to even address new case law and controlling precedent in *Brooks, infra.* The appellant is prejudiced including, but not limited to, denial of State and federal constitutional rights and denial of opportunity to establish *pro se* defendant's violation of legal interest. *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

Moreover, as you know, new case law and controlling precedent support appellant's position. New case law from the Court of Appeals in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

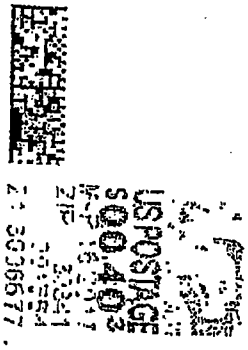
The orders on appeal deny a citizen the statutory right to defend his own cause and deny the State and federal constitutional right of every citizen of access to the courts. Accordingly, because written notice of entry of the March 14, 2017, order was mailed to the appellant, postmarked on March 16, 2017 (copy attached), and received on March 24, 2017, the affidavit is competent evidence of pertinent information. In the interest of even-handedness and fairness, it is respectfully submitted that *Miller, supra*, does not prohibit the affidavit. Even assuming that *Miller, supra*, did prohibit it, and appellant submits that it does not, the need for pertinent information supports the affidavit which is included for ease of reference.

Thanking you in advance for your kind consideration and with warmest regards, I remain

Yours very truly,

cc: opposing counsel

PRESORTED
FIRST CLASS



FAX COVER SHEET

From: C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

RECEIVED
MAY 24 2017
SC Court of Appeals