

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

RECEIVED

MAY 30 2017

SC Court of Appeals

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.

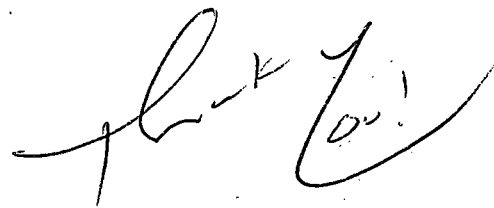
Furthermore, pursuant to Rule 203(b), (d), SCACR, serving and filing are two separate acts. Service herein was timely thereby vesting jurisdiction in the appellate court. Toal *et al, Appellate Practice in S.C.*, (2016), p. 289. Pursuant to Rule 263(b), SCACR, the filing of the notice of appeal may be 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,

A handwritten signature in black ink, appearing to read "C. H. Miller". The signature is fluid and cursive, with a large loop at the end.A handwritten signature in black ink, appearing to read "Robert L. Miller". The signature is fluid and cursive, with a large loop at the end.

cc: opposing counsel

PRESORTED
FIRST CLASS



US POSTAGE
\$0.40
NOV 16 2007
ZIP 30341
ATLANTA GA
21 3036677


STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) AFFIDAVIT

RECEIVED
MAY 30 2017
SC Court of Appeals


Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

- a. I am the appellant and this affidavit is submitted in support of the amended notice of appeal and in opposition to the return.
- b. The appellant respectfully disputes *pro se* defendant's return.
- c. Specifically, written notice of entry of the March 14, 2017, order was postmarked March 16, 2017. See attached copy of the postmark.
- d. Written notice of entry of the March 14, 2017, order was received on March 24, 2017.
- e. Accordingly, the amended notice of appeal served and filed on April 21, 2017, was timely.
- f. In addition, the amended notice of appeal relates back to the original notice of appeal timely served.
- g. 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.
- h. 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*. 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).

FURTHER THE AFFIANT SAITH NOT.


C. Holmes

Subscribed and sworn to before me,
Notary Public, this 12 day

of May, 2016. 7 

Elizabeth G. Anderson

NOTARY PUBLIC

My commission expires: 4/4/23

PRESORTED
FIRST CLASS



US POSTAGE
500 403
MAY 16 2017
ZIP 30021
2: 3006677

The Honorable Jenny Kitchings
SCCOA
1220 Senate Street
Columbia, SC 29201

RECEIVED

MAY 30 2017
SC Court of Appeals

29482-0187

Durst Family Medicine

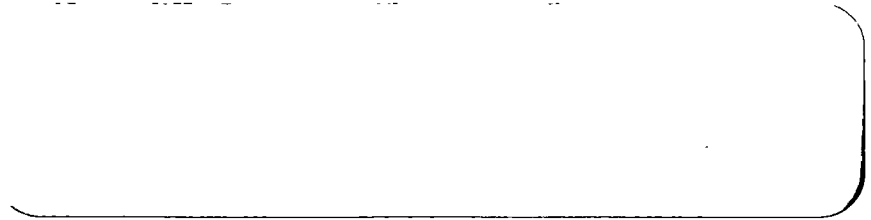
306 Station 22½

Sullivan's Island, South Carolina 29482-9788

RECEIVED

MAY 30 2017

SC Court of Appeals



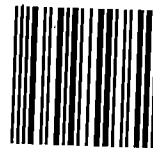
PRIORITY®
★ **MAIL** ★

FLAT RATE ENVELOPE
ONE RATE ★ ANY WEIGHT*

APPLY PRIORITY MAIL POSTAGE HERE



1024

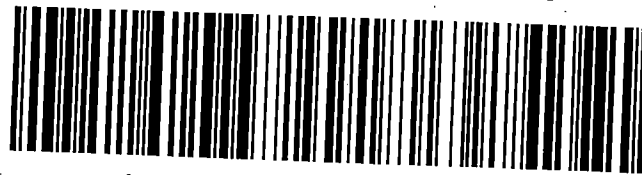


29201

U.S. POSTAGE
PAID
CHARLESTON, SC
29403
MAY 27, 17
AMOUNT
\$6.65
R2303S100564-98

Expected Delivery Day: 05/30/2017

USPS TRACKING NUMBER



9505 5127 2835 7147 0781 58

* For international shipments, the maximum weight is 4 lbs.

This product is for use with Priority Mail.®
Misuse may be a violation of federal law.

This label is not for resale.



PRESS FIRMLY TO SEAL

VISIT US AT USPS.COM®
Label 106A, Jan 2015



FLAT RATE ENVELOPE
THE RATE IS ANY WEIGHT

This product is for use with Priority Mail.
Misuse may be a violation of federal law.
This label is not for resale.



VISIT US AT USPS.COM®
Label 106A, Jan 2015



PRESS FIRMLY

This product is for use with Priority Mail.
Misuse may be a violation of federal law.
This label is not for resale.

* Domestic only.



VISIT US AT USPS.COM®
Label 106A, Jan 2015

PRIORITY®
★ MAIL ★



DATE OF DELIVERY SPECIFIED*



USPS TRACKING™ INCLUDED*



INSURANCE INCLUDED*



PICKUP AVAILABLE

* Domestic only

RECEIVED

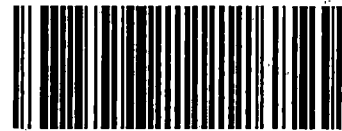
MAY 30 2017

SC Court of Appeals



UNITED STATES
POSTAL SERVICE®

EP14H July 2013
OD: 10 x 5



PS00001000064

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

EP14H © U.S. Postal Service, July 2013. All rights reserved.

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail® shipments. Misuse may be a violation of federal law. This packaging is not for resale.