

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

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Common Pleas Case No. 2012-CP-37-00902  
Appellate Court Case No. 2017-000294

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Alexander Pastene, Appellant,

v.


Marion R. McMillan and Synergy Spine Center, P.A., Respondents.

RECEIVED  
NOV 20 2017  
SC Court of Appeals

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AMENDED DESIGNATION OF MATTER  
TO BE INCLUDED IN THE ROA

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\_\_\_\_\_  
ALEXANDER PASTENE, Esq.  
Appellant, appearing *pro se*  
Post Office Box 22298  
Hilton Head Island, S.C. 29925  
Tel 843-605-5266  
Email: [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)  
Date: November 17th, 2017

Other Counsel of Record:  
David A. Wilson, Esq.  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street-Suite 100-B  
Greenville, S.C., 29601  
Tel. 864 232-2329  
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AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN  
THE RECORD ON APPEAL DATED NOVEMBER 17, 2017

Amended Addendum to Plaintiff's Motion Relief From Judgment Under rules 60 & 55  
SCRPC, dated December 2016.

Plaintiff's [Appellant's] Answer to Defendants [Respondent's] Summons and Notice,  
Answer & Counterclaim. Marked "Received", Magistrate Court, 2012 Sep 18.

Two (2) copies of Respondent's Affidavits, 2008 and 2012.

Plaintiff's Answer to Defendant's Return to Plaintiff's Answer to Hon. Judge Maddox  
Request of Returned Envelope containing Appellant's Answer & Service to Respondent

All the Orders by S.C. Magistrate Simmons, and Judge C. Maddox.

Letter from Appellant to Ms. Pam Davis, Easley Post Office, in ref. to Respondent's  
former address in Easley, lack of Forwarding address, lack of Moving Out Notice.

Complete Transcript of July 29th, 2013

Complete Transcript of April 12, 2016

Selected parts of Transcript dated: December 12, 2016

Selected parts of Transcript dated: Sept 16, 2015

Appellant's Letter to Judge Maddox dated 9-2-2015

Appellant's Letter to Judge Maddox stamped 2014 AUG 11. 2014.

Appellant's three-page motion titled: About Rule 60 SCACR, and Plaintiff's Response to  
Transcript Hearing of April 12, 2016. Dated December 30, 2016.

Plaintiff's Complaint vs Defendant McMillan.

Appellant wishes to complete the instant Designation of Matter due to lack of time  
Appellant wishes to complete the Amended Designation of Matter, out of time.

On this 17th day of November 2017, On Hilton Head Island, SC 29925

Telephone Records of calls from Walhalla Clerk of Court Ms. Whitfield, Ms Hightower

Telephone Records of call on the morning of April, 12, 2016.

Affidavit of Witnesses

CERTIFICATION: Additionally, the Appellant certifies that he has not included in his INITIAL BRIEF OR DESIGNATION OF MATTER TO BE INCLUDED IN THE ROA any extraneous or unrelated matters not pertinent to the instant appeal.

Respectfully Submitted,



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ALEXANDER PASTENE, Esq.  
Appellant, appearing *pro se*  
Post Office Box 22298  
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Email: [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)  
Date: November 17th, 2017

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Trial Court Case No. 2012CP3700902  
Cordell Maddox, Circuit Court Judge

Case No. 2017-000294

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SC Court of Appeals

Alexander Pastene, Appellant,


v.

Marion R. McMillan and Synergy Spine Center, P.A., Respondents

PROOF OF SERVICE

I certify that, I have served the Appellant's Initial Brief and Designation of Matter to be included in the ROA, dated November 17th, 2017, onto Marion R. McMillan by depositing a copy of it in the United States Mail, postage prepaid, on this Nov., 17th, 2017, addressed to his attorney of record, David A. Wilson, 200 Whitsett St. Suite 100B, Greenville, SC 29601

Signed: \_\_\_\_\_

  
Alexander Pastene, Esq.  
Appellant Appearing *pro se*  
P.O. Box 22298  
Hilton Head Is., SC 29925  
843-605-5266  
Date: 11-17-2017

David A. Wilson, Esq.  
For Respondent  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street - Suite 100-B  
Greenville, SC 29601  
864-232-2329



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	CASE NO.: 212-CP-37-00902
	)	
ALEXANDER PASTENE,	)	AMENDED
Plaintiff,	)	ADDENDUM TO PLAINTIFF'S
	)	MOTION RELIEF FROM JUDGMENT
vs.	)	UNDER RULES 60 AND 55 SCRPC
	)	DATED DECEMBER 2016
MARION MCMILLAN & SYNERGY SPINE	)	
	)	
CENTER, P.A.	)	
Defendants.	)	

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Comes now, the Plaintiff, Alexander Pastene, on this Monday, June 22, 2016, and details the sequence of events since the inception of the case *sub judice*:

**FACTS AND DETAILED SEQUENCE OF EVENTS**  
**2012-2013-2014-2015-2016**

**2012**

1. **On or about June 2012**, right before the Defendant was to appear to deliver his first medical dissertation at Sun City, in Bluffton, SC —which the Plaintiff had initiated and set up as part of a Marketing Plan for him— the defendant rescinded his contract with the Plaintiff, stating that his wife was taking over from there. What a disagreeable surprise and disappointment.
  
2. **On May 29, 2012**, Plaintiff contacted defendant McMillan demanded payment for marketing services rendered, and appended his Invoice dated May 25, 2012.
  
3. **On May 31, 2012**, the defendant responded via email, stating that he refused to pay, disavowed any contract between Plaintiff and defendant, and proceeded insult and falsely accuse the him of being “CERTIFLABLY INSANE”, having engaged in “MEDICAID FRAUD”, and allegedly placed false complaints against Plaintiff with Medicaid and the SC

Attorney General's Office, both of which government entities investigated Plaintiff and found no wrong doing). See Plaintiff's letter to Magistrate Simmons dated 6-7-12.

4. **On June 18, 2012**, the Plaintiff, filed a **Summons & Complaint** in **Magistrate Court**, Seneca, South Carolina, against defendants Marion McMillan & Synergy Spine Center for Debt Collection of \$7,500.00 fees for marketing services & implementation rendered to defendants Marion McMillan and Synergy Spine Center, in addition to offenses against S.C. Public Policy, Blackmail-Extortion.

5. **On or about June 25, 2012**, Defendants filed a **Motion to Dismiss** that was **DENIED by Magistrate Simmons** during the July 23, 2012 hearing, signed into Order on August 16, 2012. The defendants Answered the Plaintiff's Complaint on August 31, 2012; that is, seventy five (75) days after the Plaintiff's Complaint, which technically placed the defendants in default.

6. **On July 23, 2012**. A hearing took place in Seneca, S.C. before Magistrate Court, Honorable Judge Michael Todd Simmons presiding, to review and discuss the facts and applicable law of the Plaintiff's case. Defendant was represented by attorney Gruber Sires, however, no "Answer" to the Plaintiff's Complaint was filed by the defendants until August 31, 2012.

7. **On August 16, 2012**, Magistrate M. Todd Simmons issued the Order denying Defendants Motion to Dismiss, see copy of Judge Simmons' Order, and ordered that a bench or jury trial be set to determine the existence of a "meeting of the minds". The defendants immediately changed attorneys, from Gruber Sires to David Wilson, who fabricated a baseless Defamation counterclaim against the Plaintiff.

8. **On August 31, 2012**, the defendants filed Answer and Counterclaim to Plaintiff's Complaint denying all of the Plaintiff's allegations and Motioned to Dismiss, praying for relief on their Counterclaim. *(Please note that Judge Simmons had already ruled on the defendants' Motion to Dismiss —the defendants did not motion to*

*reconsider or appealed*). See doctrine of res judicata. Defendants' Motion to Dismiss of August 31, 2012, had already been DENIED by the Magistrate Court, thus, the new Motion to Dismiss in Common Pleas was improper. Assuming the defendants were not found to be in default, a trial date on the Collection of Marketing fees should've been set at that time, which the plaintiff reiterates herewith.

9. **On September 12, 2012**, the Plaintiff responded to defendants' Answer and Counterclaim of August 31, 2012, by denying all allegations on the Defamation and demanding strict proof, copy of which was filed with this honorable court.

10. **On September 18, 2012**, Judge Magistrate Simmons Ordered that the entire matter be transferred to the docket of the Court of Common Pleas for Oconee County.

11. As regards discovery on the Defendants Counterclaim on Defamation, as of today's date (6-10-2016) the defendants have not produced any evidence whatsoever to support their counterclaim for Defamation against the Plaintiff. Meanwhile, discovery on the defamation countersuit never took place, mainly due to defendants' frivolous Motions of Default and other procedural rigmarole designed to confuse and delay.

Moreover, during the Anderson Courthouse hearing of 9-16-15, upon Judge Maddox's inquiry on discovery, Attorney Wilson stated his expedient opinion: ***"I don't think it warrants discovery. Here's my evidence. We are ready to go."*** See Transcript of 9-16-15, Page 18, lines 20 & 21. Attorney Wilson never submitted any evidence.

12. **On Sept. 7, 2012**, Plaintiff reported Dr. McMillan's actions and threats against the Plaintiff to the SC Dept. of Labor, Licensing & Regulation, because medical doctors are not supposed to extort/threat patients. Plaintiff was Defendant McMillan's patient.

13. **On September 12, 2012**. Plaintiff filed "PLAINTIFF'S RESPONSE TO DEFENDANTS' SUMMONS & NOTICE, ANSWER AND COUNTERCLAIM" before Seneca Magistrate Court, Oconee County, SC., under Civil Action 2012-CV-3710-100244, with

copy to defendants, where he denied every allegation and demanded strict prof (which was never produced by the defendant).

14. **On Sept 20, 2012**, defendant McMillan falsely accused Plaintiff before the SC Attorney General, Alan Wilson and Medicaid, by falsely alleging fraud. An investigation followed but no wrong doing was found on the part of the Plaintiff. See letter from Plaintiff to Attorney General Alan Wilson dated 9-20-12.

15. **On November 11, 2012**, the Plaintiff wrote a letter to Judge MacAulay, Resident Judge, stating that Plaintiff, indeed, had Answered Defendant's Counterclaim, on 9-12-15, with copy to Attorney Wilson and the Courts (Walhalla and Magistrate Clerk of Court), see PLAINTIFF'S RESPONSE TO DEFENDANT'S SUMMONS & NOTICE, ANSWER AND COUNTERCLAIM, which he effectuated before Seneca Magistrate Court.

16. **On November 13, 2012**, the defendant filed an Affidavit of Default, stating that the Plaintiff had failed to Answer defendant's Counterclaim for Defamation sent to him by regular mail on September 6, 2012. This is not true. The Plaintiff did file Answer to defendants' Counterclaim with copy to attorney Wilson, and the courts, six (6) days from receipt on Sept. 12, 2015, which was clocked Sept 18, 2012.

17. **On November 14, 2012**, defendant Filed Motion for Default Judgment against Plaintiff falsely alleging no answer by Plaintiff.

18. **On November 21, 2012**, Plaintiff wrote a letter to Honorable Judge MacAulay, with copy to Honorable Clerk of Court Walhalla, acknowledging receipt of defendants' Motion for Default judgment essentially stating that attorney Wilson had lied to these Honorable Courts, because Plaintiff had, indeed, timely answered. See official record, Walhalla Courthouse to find out that Plaintiff had timely Answered and denied all allegations in the defendant's counterclaim. Attorney Wilson mislead the court and Plaintiff by using a misleading false address in his stationary. See copy of letter to Judge MacAulay, attached herewith.

## 2013

19. **ON JANUARY 30, 2013**, Defendants frivolously filed Motion for Default Judgment against the Plaintiff for failure to timely respond to Defendants' Counterclaim that he had already answered and timely filed!
  
20. **ON FEBRUARY 2-2013**, Letter by the Plaintiff to Hon. Beverly Whitfield, Oconee County S.C., Clerk of Court, in response to defendants' and Attorney Wilson to Ms. Beverly Whitfield of January 30, 2012, stating that defendants' attempt to have the case dismissed on default grounds is erroneous, insomuch that Plaintiff had responded on 9-12-2012, (six (6) days after he received the defendants' Answer and Counterclaim), clocked 9-18-12, denying all allegations, and asking the court to set a trial date.
  
21. **ON MAY 17, 2013, clocked May 21, 2013**, Plaintiff wrote a letter to Hon. Judge Alexander MacAulay, stating concern that the case was not moving forward, that the defendants' counterclaim was a sham, to deny it, and remand to Magistrate.
  
22. **On JUNE 11, 2013**, Notice of Motion Scheduling. MMFDEF Motion/Default Judgment by defendants against the Plaintiff, was scheduled for July 29, 2013.
  
23. **On JULY 12, 2013**, Notice of Case Scheduling, Jury Roster for the week of August 12, 2013, before Hon. Judge R. Lawton McIntosh, Presiding.
  
24. **On July 18th, 2013**, Defendants' attorney Wilson wrote letter to Hon. Cordell Judge Maddox, Jr., at P.O. Box 8002, Anderson, SC, stating that on April 22, 2013, he filed Motion for Default Judgment against Plaintiff, which he attached, and inquired whether the hearing of July 29th, 2013, would address the "default on the counterclaim" or was set for "damages".

25. **ON AUGUST 1, 2013**, defendants' contacted the S.C. Attorney General's Office enclosing and stating that a Subpoena had been filed, commanding them to release or permit inspection of documents related to the "Investigation of Alexander Pastene" triggered by their wanton & vicious accusations of a Medicare fraud that never existed.

26. **On August 6 & 7, 2013**, defendants clocked "DEFENDANTS' RETURN TO PLAINTIFF'S ANSWER TO HON. JUDGE MADDOX'S REQUEST OF RETURNED ENVELOPE CONTAINING RESPONSE TO DEFENDANTS'S COUNTERCLAIM DATED AUGUST 12, 2012", which included:

- a. An incomplete and misleading defendants' TIMELINE OF PLEADINGS;
- b. Copy of Plaintiff's Civil Action in Magistrate Court, clocked June 21, 2012;
- c. Plaintiff's affidavit & itemization of accounts clocked June 21, 2012;
- d. Plaintiff's Complaint dated June 18, 2012;
- e. Certified Copy of Judge M.Todd Simmon's Order dated 8-16-12;
- f. Defendants' Summons and Notice, clocked 8-31-12;
- g. Defendants' Answer and Counterclaim dated August 29, 2012;
- i. Order by Judge Magistrate Simmons dated 9-18-2012, transferring the entire matter to Common Pleas, Oconee County;
- j. Notice of Transfer of Case to Common Pleas, clocked October 12, 2012.
- k. Plaintiff's Response to Notice of Transfer of case to Common Pleas, increasing the amount owed the Plaintiff by the defendant to Thirty One thousand eight hundred (\$31,800.00) dollars.
- l. Defendants' Affidavit of Default as to Defendant's Counterclaims, clocked November 14, 2012.
- m. Plaintiff's Letter to Hon. Judge Alexander MacAulay, dated 5-17-13, concerned that the case was not moving forward, **demanding a dismissal** of the defendants' counterclaim.

27. **ON AUGUST 20, 2013**, Plaintiff received letter from the SC Dept. Labor, Licensing and Regulation, Board of Examiners, stating that his Complaint against

defendant Dr. McMillan, for threatening and extorting the Plaintiff (a patient of his) had been dismissed.

28. **ON SEPTEMBER 3, 2013**, a non-jury Motion Quash Subpoena & Protective Order, MQUASH, was added to the roster hearing set for 9-3-2013. hearing for Fraud against the Plaintiff for defrauding the Medicaid system. Defendants' request for information from the SC Attorney General's Office. conducting an investigation of Mr. Pastene. Mr. Moultrie D. Roberts, S.C. Assistant Attorney General, of the SC Attorney General's Office, appeared before Judge Alexander MacAulay, to have the Motion quashed, which subsequently was quashed.

29. **ON SEPTEMBER 6, 2013**, Defendants and their attorney David Wilson who failed to appear for the Sept. 3, 2013 hearing before Hon. Judge MacAulay, wrote letter of apology to Judge MacAulay, and requested that the hearing be rescheduled. The Motion to Quash was granted the SC Attorney General.

30. **ON SEPTEMBER 10, 2013**, The Plaintiff, wrote letter to Hon. Judge MacAulay, expressing his dismay at the defendants' delaying tactics.

31. **ON SEPTEMBER 20, 2013**, MQUASH-Ex Parte Motion to Quash Subpoena and Protective Order; hearing was scheduled for 10-24-1013. Order issued 10-28-1013.

32. **ON NOVEMBER 5, 2013**, NOTICE OF CASE SCHEDULING. Trial set for the week of December 2, 2013. This notice was postponed until Judge Maddox rules on his "on advisory" ruling.

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**2014**

33. **ON JUNE 17, 2014**, ORDER OF DEFAULT JUDGMENT. (Please note that Plaintiff was never notified of Judge Maddox's Order of Default Judgment).

34. **ON AUGUST 11 2014**, clocked copy of Plaintiff's Letter to Hon. Judge Cordell Maddox with enclosures showing Plaintiff did respond to Defendants' Summons & Notice, Answer and Counterclaim on September 12, 2012. Also, letter to Hon. Judge A. MacAulay, dated 11-21-12.

35. **ON AUGUST 11, 2014**, PLAINTIFF'S MOTION FOR RECONSIDERATION HON. JUDGE MADDOX ORDER OF JUNE 13, 2012.

36. **ON AUGUST 26, 2014**, MRECON Motion for Reconsideration HEARING SCHEDULED FOR SEPTEMBER 30, 2014, 2:00PM, in Walhalla Courthouse, S.C.

37. **ON SEPTEMBER 10, 2014**, Defendants' letter by Attorney Wilson advising of hearing, and making offer to discuss reasonable settlement of the matter.

38. **ON SEPTEMBER 19, 2014** (clocked 9-22-14), Plaintiff's response to defendants' letter of September 10, 2014, agreeing to a reasonable settlement, but Plaintiff never heard from defendants again.

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## 2015

39. **ON FEBRUARY 05, 2015**, MRECON - Motion to Reconsider, hearing scheduled for February 26, 2015.

40. **ON FEBRUARY 24, 2015, CLOCKED MARCH 2, 2015**, Plaintiff's letter to Hon. Judge Maddox with polygraph attachments.

41. **ON FEBRUARY 25, 2015, CLOCKED MARCH 4, 2015**, Plaintiff's letter to Clerk of Court, Hon. Beverly Whitfield with a second polygraph attachment to be included in the record.
42. **JULY 24, 2015, NOTICE OF CASE SCHEDULING**. Jury Roster Status Conference. for the court period of 8/14/15 thru 8/14/15. 3 of 37 cases.
43. **ON AUGUST 10, 2015**. Motion Hearing, September 1, 2015, Motions to Reconsider by Plaintiff, and Default & damages by defendants.
44. **ON AUGUST 20, 2015**. Letter from defendant's attorney Wilson to Plaintiff Pastene informing him of Sept. 1, 2015 hearing.
45. **ON AUGUST 27, 2015. NOTICE OF CASE SCHEDULING. JURY ROSTER FOR THE WEEK OF SEPTEMBER 28, 2015. COMMON PLEAS JURY TRIAL. HONORABLE LETITIA H. VERDIN, PRESIDING.**
46. **ON SEPTEMBER 2, 2015, PLAINTIFF'S LETTER TO JUDGE MADDOX, CLOCKED 9/14/15**. Notice of rescheduled hearing for 9-16-2015 at Anderson, SC.
47. **ON SEPTEMBER 4, 2015**, Letter from Clerk of Court Hon. Beverly Whitfield to Plaintiff informing of hearing rescheduling for Sept. 16, 2015 in Anderson SC.
48. **ON SEPTEMBER 21, 2015**, letter to Court Recorder from Attorney Wilson for the defendants requesting copy of the 9-16-15 transcript.
49. **ON SEPTEMBER 16, 2015**, Hearing before Hon. Judge Maddox at the Courthouse in Anderson, S.C. See copy of Transcript of that same date.

50. **ON SEPTEMBER 22, 2015, Clocked 9-22-15. FORM4, JUDGMENT, Case to be continued** from the Jury Trial roster for the term of September 28, 2015, and not to be placed on the docket until after January 1, 2016. ***Please note Order Error: The Motion was by the Plaintiff; not the defendant.***

51. **ON OCTOBER 31, 2015, CLOCKED NOVEMBER 13, 2015,** Plaintiff's Answer to Defendants' Return.

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## 2016

52. **ON MARCH 10, 2016. NOTICE OF MOTION SCHEDULING.** Hearing scheduled for April 12, 2016 at 2:00pm. Damages Hearing.

53. **ON APRIL 1ST, 2016. ORDER DENYING PLAINTIFF MOTION FOR RECONSIDERATION.**

54. **ON APRIL 14, 2016,** Plaintiff's letter to Court Recorder requesting transcript.

55. **ON APRIL 18, 2016, CLOCKED APRIL 19, 2016.** Form 4 Judgment in a Civil Case.

56. **ON APRIL 23, 2016,** Plaintiff letter to Court Recorder ordering transcript of 9-16-2016.

57. **ON APRIL 29, 2016. PLAINTIFF'S MOTION TO VACATE JUDGE MADDOX'S ORDER OF 4-1-16, RECONSIDER, AND SET DATE FOR TRIAL BEFORE JURY.**

58. **ON JUNE 13, 2016. HON. JUDGE MADDOX'S ORDER DENYING PLAINTIFF MOTION TO VACATE JUDGMENT.** Order was received by Plaintiff on June 26, 2016.

59. **ON JUNE 27th, 2016, PLAINTIFF'S SWORN AFFIDAVIT. Clocked July 8th, 2016.**

60. **ON JUNE 29th, 2016, PLAINTIFF'S MOTION RELIEF FROM JUDGMENT UNDER RULES 60 SCRPC & 55 SCRPC. Clocked July 8TH, 2016.**

61. **On JUNE, 22, 2-16, clocked JULY 8TH, 2016, ADDENDUM TO PLAINTIFF'S MOTION RELIEF FROM JUDGMENT UNDER RULES 60 AND 55 SCRPC. FACTS AND DETAILED SEQUENCE OF EVENTS 2012 THRU 2016. STANDARD OF REVIEW AND LAW ANALYSIS.**

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### **STANDARD OF REVIEW**

“Before invoking this severe remedy [default] the trial court must first determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case”. See Balloon Plantation v. Head Balloons, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990). The sanction should be aimed at the specific misconduct of the party sanctioned. See Balloon Plantation, 303 S.C. at 154, 399,S.E.2d See at 440.

Furthermore, “whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure”. See Downey, 294 S.C. at 45, 362

S.E.2d at 318; Kershaw Co. Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990).

The South Carolina Rules of Civil Procedure (SCRCP) are clear and comprehensive when it comes to Judgments by Default, *see SCRCP Rules 37, 55, 60, et seq.*

In 1997, the South Carolina Court of Appeals was explicit in deciding a case on the subject of default, *see 327 S.C. 538 (1997) 489 S.E.2d 679 Paul KARPPI, d/b/a P/C Technology, Respondent, v. Greenville Terrazzo Co., Inc. and Ogden Teck Inc.*, it argued as follows: "The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court" *see Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App. 1987)*. A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred, *see Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct.App. 1985)*. The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion, *see Clark, 284 S.C. at 570, 328 S.E.2d at 107. (Ct.App. 1985)*. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law, *see Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974))*.

Rule 37 SCRCP, expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion for a party's failure to respond to certain discovery requests, *see Rule 37(b)(2)(C) & (d), SCRCP*, however, when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly. *See generally Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)*.

## LAW/ANALYSIS

Above all, the Plaintiff, Alexander Pastene, never displayed any misconduct, violated a court order, or incurred any elements of bad faith, willfulness, or gross indifference to the rights of other litigants to warrant a judgment by default. Also, the conclusion reached by the trial court may have been without reasonable factual support and resulted in prejudice to the rights of the Plaintiff, thereby amounting to an error of law. Also, Attorney for the defendant opposed to discovery, see Judge Maddox Page 18, line 18); discovery never took place in Court of Common Pleas.

Moreover, in the case at bar the defendants attempted to foreclose a decision on the merits by using, *ab initio* every procedural machination, including frivolously removing the case that the Plaintiff filed in Magistrate Court based on fabricated and false grounds (a defamation that never existed). The defendants viciously removed the case from Magistrate to Circuit Court to avoid a sure loss at Magistrate. See September 16, 2015, Court Transcript page 4, line 13, and lines 15 thru 19 [hearing held at the Anderson Courthouse 9-16-15]. The defendant and his attorney David Wilson seemingly threw a red herring at the Plaintiff's original Complaint (Collection of a debt for marketing-consulting-services by filing a bogus defamation counterclaim, while induced the Plaintiff to respond to a false address printed in his official stationary.

Additionally, the Plaintiff, Alexander Pastene, argues that this Honorable Court may have erred in granting a default order to the defendants McMillan and Synergy Spine, on this claim, prior to the opportunity for full and fair discovery, see Transcript page 18, line 20; the Plaintiff was not given the opportunity to exercise his right to depose the defendant.

The Plaintiff, who has been waiting for relief since 2012, i.e., about four (4) years to get relief from these honorable courts, *idem*, never showed any indications of bad faith, willfulness, or gross indifference to the rights of the other litigants to deserve a Judgment by default. Quite on the contrary, he was compelled to travel about four (4)

times from Hilton Head Island to Seneca, Walhalla, and Anderson, for a total of about 32 hours travel time on the road in response to these Honorable Courts.

Notwithstanding, Rule 55 (c) SCRCPC states that for good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b) (1). Note should be taken that there was confusion between the two Clerks of Court of Walhalla and Anderson, followed with instructions to the Plaintiff by the Walhalla Clerk of Court to attend the hearing unless otherwise notified; he was notified, so, he followed instructions and did not attend; clearly a misunderstanding that never involved bad faith, willfulness, or gross indifference to this Honorable Court or the rights of the other litigants by the Plaintiff. Also see Rule 60 SCRCPC.

Admittedly, Walhalla Hon. Clerk of Court Beverly Whitfield placed an early telephone call to the Plaintiff —who is not a Walhalla local— on the day of the hearing, and left a message indicating that he was to attend the hearing of that same day, however, the plaintiff was working that morning at his golf course job on Hilton Head Island, and did not receive the message until about 2:00 pm or 3:00 pm, which would've made it impossible to make it on time for the hearing at Walhalla. Travel time from Hilton Head Island to Walhalla, SC is about four (4) to five (5) hours.

Moreover, please note that the Plaintiff's telephone carrier (Family Mobile) does not serve the area where he was working and the golf course is located. Meanwhile, the Plaintiff questions why didn't the Clerk of Court, Hon. Beverly Whitfield not advice the Plaintiff by telephone message the day or evening before that he was to appear before Hon. Judge Maddox the next day knowing that it was impossible for the Plaintiff to meet the deadline if he was coming from out of town four to five hours away?

Wherefore, the Plaintiff pleads with this Hon. Court that based of the foregoing it vacates its default orders, and sets a date for the trial of to elucidate the merits of the case at bar, to take place at the earliest possible.

Respectfully submitted,




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Alexander Pastene, Esq.,  
Appearing *pro se*  
P.O. Box 22298  
Hilton Head Is., S.C., 29925  
email: pastenehalexander@gmail.com  
843-605-5266

On Hilton Head Island, South Carolina,  
On this 7th day of December, 2016

cc. Oconee County Clerk of Court, Walhalla, SC  
Attorney David Wilson, Columbia, SC  
Honorable Judge Maddox-Anderson, SC. Attn. Robert Lake.

Certificate of Mailing

The Plaintiff, Alexander Pastene, certifies that on this December 7th 2016, he served his Amended Addendum to Motion for Relief from judgment to Honorable Judge Cordell Maddox, at P.O. Box 8002, Anderson, S.C., 29622, and the defendants, by placing copies in the US Postal Service, postage paid, addressed to defendants' attorney David Wilson, Esq. last known address at 200 Whitsett Street, Suite B, Columbia, South Carolina, 29601. Signed:  Alexander Pastene

- 1 Attorney Wilson did NOT advise the Post Office that he had moved**
- 2 CHECK THE SEQUENCE OF EVENTS –DATES. THEY SEEMS SCRAMBLED**
- 3. k**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	CASE NO.: 212-CP-37-00902
	)	
ALEXANDER PASTENE,	)	
Plaintiff,	)	ABOUT RULE 60 SCRPC, AND
	)	PLAINTIFF'S RESPONSE TO
Vs.	)	TRANSCRIPT OF HEARING
	)	OF APRIL 12, 2016, AND
	)	
MARION MCMILLAN & SYNERGY SPINE	)	
	)	
CENTER, P.A. Defendants.	)	
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Comes Now, the Plaintiff Alexander Pastene, on this 30th day of December, 2016, and respectfully reiterates that, he had been held by this court to be in default in failing to Answer the Defendant's Answer & Counterclaim, filed in Seneca Summary Court, and served onto the Plaintiff on September 6th, 2012, despite Plaintiff's argument *ab initio* since 2012, that **he had not been in default** (bolded for emphasis).

Specifically, the Plaintiff filed his Answer in Summary Court and notified defendants of his denial and demand of strict proof to the defendants' address appearing in Attorney David Wilson's stationary in Easley, S.C. —which is the closest town up from Seneca's Summary Court— but the letter came back undelivered. Upon Plaintiff's request, USPS-Easley confirmed to him that there was no record for forwarding address, moving notice, or information about Attorney David Wilson.

In reviewing the recently received Transcript of the April 12, 2016-hearing, from Circuit Court Recorder, the defendants' falsely stated therein as follows:

1. That, "He [the Plaintiff] did not respond to our [defendants] Counterclaim" See page 2 line 16 et seq., of the Transcript of 4-12-16, 4-12-16. This not true.
2. That, "Plaintiff did not Answer the defendants' Counterclaim" and declared under oath: "Accordingly, the Plaintiff Alexander Pastene is in default". Please note that the

defendant actually Swore in Affidavit of Default, and had his false statement certified by Notary Public. See copy of defendant's sworn Affidavit enclosed herewith.

3. That, Judge Maddox may have issued his Orders based on [false] "exhibits before him and false testimony given". See, Page 24, line 2 of the Official Transcript of 4-12-12.

4. That, Defendants' Answer & Counterclaim, and Summons & Notice, were filed before **Summary Court** on August 31, 2012, which were served onto the Plaintiff on September 6th, 2012, clocked copy of which is enclosed herewith. Irrespective, Plaintiff answered to the defendants before Summary Court on September 12th, 2012, which clocked it on September 18th, 2012, within statute.

5. That, Defendant McMillan declared under oath to Judge Maddox that, "Plaintiff had been held in Default on a claim for damages" see page 5 line 25, and page 6 line 1 of Transcript the April 12, 2016. This is false; Plaintiff was not in default.

6. That, the Plaintiff denied having defamed, retaliated, or having defendant's seminars at Sun City, Tide Pointe, or elsewhere cancelled, and demanded strict proof. Defendant ended the business agreement with Plaintiff, who required payment for marketing services rendered. To avoid payment Defendant threatened Plaintiff with complaints before SC Attorney General's Office, Medicare, and Medicaid, which he effcetuated. Plaintiff did not solicit business from defendant. Defendant wanted to open office on Hilton Head Island, and sought the Plaintiff's assistance.


Plaintiff was compelled to file complaint against Defendant McMillan because he threatened Plaintiff who was his patient. Doctors are not allowed to threaten patients.

7. That, Defendant McMillan slandered Plaintiff for using "quasi-legal training" to extort money from others, which is denied, see Page 21, line 25, and ditto Page 22, line 14. Plaintiff is a trained lawyer, who graduated from an accredited State University Law School, under a regular 4 year graduate program, that required about 125 credit hours of legal work to complete, and was awarded an official diploma.

8. That, the statement: "And obviously this is not the first time I've had a hearing and he [Plaintiff] has failed to appear" is incorrect, see page 2, line 19, and page 23, lines 18-20 of the Transcript. Plaintiff failed to appear only once on 4-12-16 due to court error

Wherefore, according to Rule 60 SCRPC, Plaintiff pleads relief with this Hon. Court. That, all Orders of Default and damages grounded on false Defamation or contractual matters based on defendants' hearsay, including actual & punitive damages for Defamation, based on false exhibits and false testimony given by the defendants before Hon. Judge Maddox on 4-12-12, are vacated; that, interrogatories are effectuated, and a trial date is set (as promised by this honorable court about December 2013, and during the September 16, 2015, hearing at Anderson Courthouse)


Respectfully submitted,

  
\_\_\_\_\_  
Alexander Pastene, Esq.,  
Appearing *pro se*  
P.O. Box 22298  
Hilton Head Is., S.C., 29925  
email: pastenehalexander@gmail.com  
843-605-5266

On Hilton Head Island, South Carolina,  
On this 30th day of December, 2016

cc. Oconee County Clerk of Court, Walhalla, SC  
Attorney David Wilson, Columbia, SC  
Honorable Judge Maddox-Anderson, SC., and Robert Lake.

Certificate of Mailing

The Plaintiff, Alexander Pastene, certifies that on this December 30th 2016, he served the defendants; by placing copies in the US Postal Service, postage paid, to their last known address at 200 Whitsett Street, Suite B, Columbia, South Carolina, 29601. Signed:  Alexander Pastene

my copy

EXHIBIT 2x

FILED OCOONEE, SC  
IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF OCOONEE )  
BEVERLY H. WHITFIELD )  
CLERK OF COURT )

IN SENECA MAGISTRATE COURT  
CIVIL ACTION NO: 2012-CV-3710-100244

Alexander Pastene )  
2012 OCT 11 PM 4 51 )

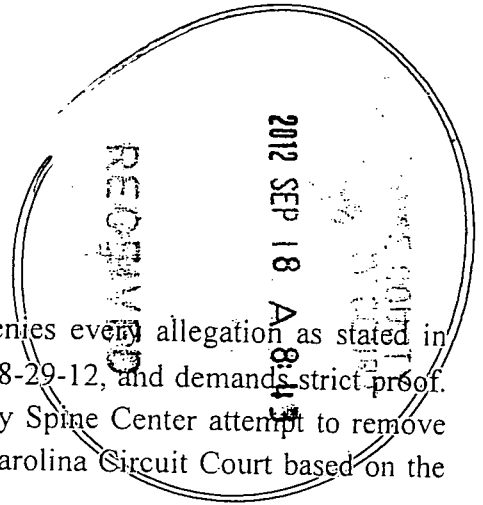
PLAINTIFF'S RESPONSE TO DEFENDANT'S  
SUMMONS & NOTICE, ANSWER  
AND COUNTERCLAIM

Plaintiff,

Vs.

Marion R. McMillan and Synergy )  
Spine Center of Seneca, S.C. )

Defendants.



Comes now the Plaintiff Alexander Pastene, and denies every allegation as stated in defendants' Summons & Notice, Answer & Counterclaim of 8-29-12, and demand strict proof. Additionally, he opposes defendants McMillan's and Synergy Spine Center attempt to remove the instant case from Oconee's Summary Court's to South Carolina Circuit Court based on the following arguments:

1. That, on June 18, 2012, the Plaintiff filed his Summons and Complaint against defendants Marion R. McMillan and Synergy Spine Center in Magistrate's Court and not Circuit Court. That, On June 25, 2012, the defendants filed a Motion for Dismissal. On July 23, 2012 a hearing took place to resolve the legal arguments raised by the defendants. Then, on 8-7-12, the defendants filed two (2) jurisprudence cases concerning "meeting of the minds". On 8/16/12 the Magistrate Court denied the defendants' motion to dismiss.

That, according to Rules 7,8, et seq., SCRMC, Rule 12(a) (b) SCRCP et seq., the defendants' SUMMONS AND NOTICE and ANSWER AND COUNTERCLAIM dated August 29, 2012, was not timely filed, and although pleadings may be amended at any time before or during the trial or upon appeal, the allowance of the amendment applies only to promote "substantial justice" (Rule 14, SCRMC); not evade it as in the case at bar.

2. That, the amount demanded by the Plaintiff in the case at bar is \$7,500.00, and not \$25,000.00, which action falls within this Honorable Summary Court's jurisdiction as filed by the Plaintiff under the SCRMC.

3. That, according to the doctrine of *res judicata*, where identical parties or their privies, in identity of subject matter, adjudication of the issue in the former lawsuit exist, then in such a case the unsuccessful litigant is precluded from re-litigating the claims that were actually litigated and any which could have been litigated, see Ford v. Watson 282 SC 66.316 SE 2d 429 (Ct App., 1987). Clearly, the defendants did not like this Honorable Court's proceedings and Order and now wish to remove it to another court to start the case over again.

4. That, based on the doctrine of Malicious Prosecution recognized by the Supreme Court of South Carolina (SCSC) as a cause of action for the prosecution of any ordinary civil action, which elements are: the institution or continuation of original judicial proceedings, either civil or

criminal; by or at the instance of the defendant; the termination of such proceedings in the plaintiff's favor; maliciousness in instituting such proceedings; want of probable cause resulting injury or damage; see Gaar v North Myrtle Beach Realty Co. 287 SC 525, 339, SE 2d 887 (Ct App 1986). and Cisson v. Pickens Savings & Loan Association, 258 SC 37, 186 SE 2d 822 (1972), wherefore the defendants' untimely answer and counterclaim should be denied.

Maliciousness on the part of the defendants has been ongoing since the Plaintiff demanded payment and the defendants responded by: first, defaming him with false accusations of insanity by the medical doctor he trusted; blackmailing the plaintiff to deter him from collecting and suing him; unfairly denying the Plaintiff's allegations despite an abundance of documentary evidence to the contrary; attempting to remove the case to another court using groundless counterclaims and false accusations to further deter and intimidate him. Moreover, the defendants' resolve to avoid paying the Plaintiff for services rendered, which they promoted, accepted and declared complete satisfaction are now paying fees to two attorneys to help them evade their obligations shows a quality of bad faith and viciousness that should be taken into account in deciding the case at bar, see C.A.N. Enters., Inc. v. S.C. Health & Human Serv. Fin. Comm'n., 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

5. That, this Honorable Court's Order of 8-16-12 denied the defendants' Motions to Dismiss, whereas the determination of intent to be bound depends not only on words but conduct as which must be determined in either a bench or jury trial.

Wherefore, the Plaintiff pleads with this Honorable Court that, the defendants' captioned "Summons & Notice" & "Answer & Complaint" is dismissed with prejudice and the defendants are found in default; the bench trial on October 15, 2012, at 10am in Magistrate's Court, Seneca, S.C. is confirmed; it awards compensatory and punitive damages plus fees and costs given the defendants' willfulness and malice; so, that justice can be done between the parties.

Respectfully submitted,

On Hilton Head Island, S.C.  
On this 12<sup>th</sup> day of September, 2012



Alexander Pastene  
Plaintiff, appearing *pro se*  
P.O. 22298  
Hilton Head Is., S.C. 29925  
843-227-2695

Alexander Pastene, Esq.  
Post Office Box 22298  
Hilton Head island, S.C., 29925  
Email: [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)  
843-605-5266

Ms. Pam Davis  
EASLEY POST OFFICE  
810 S. Pendleton St,  
Easley, SC 29640

June 27th, 2016

Dear Ms. Davis:

It was nice talking with you over the telephone on today's date in reference to a forwarding address requested by a one David A. Wilson, Esq., who was domiciled at 600 North A Street, Easley, South Carolina, 29640, and moved to 200 Whitsett Street, Suite B, Greenville, South Carolina, 29601.

Specifically, I wish to know if attorney David A. Wilson placed a forward mail request. I believe that Attorney Wilson may have closed his office in Easley and moved to Greenville sometime around 2012.

Looking forward to your response, I remain,

Sincerely,

A handwritten signature in black ink, appearing to be 'AP' with a large loop and a horizontal stroke.

MM/AP

Alexander Pastene  
Post Office Box 22298  
Hilton Head Island, South Carolina, 29925  
Email: [alexanderpastene@yahoo.com](mailto:alexanderpastene@yahoo.com)  
843-605-5266

Date: 9-2-2015  
Case #2012-cp-3700902

Honorable J. Cordell Maddox Jr., Judge  
P.O. Box 8002  
Anderson, SC 29622

Dear Judge Maddox:

I wish you well and a quick recovery from the ear ailment.  
As you may know, yesterday's hearing at Walhalla was postponed until Wed.,  
September 16 at 3pm., for which I am thankful.

Defendant McMillan acted irresponsibly *ab initio* by stressing me out unnecessarily with his proverbial untruths and procedural tricks to avoid what seemed like a certain judgment against him in Magistrate Court; his motions to dismiss were all denied. Then, instead of paying his bill defendant McMillan replaced attorneys —with a one David Wilson, who knows better than removing a case to circuit court grounded on a frivolous defamation counter-lawsuit that was never supported by evidence. Notwithstanding, attorney Wilson *modus operandi* seems to be the use of two different addresses in his stationary, one of which is (or was) fictitious, seemingly for the purpose of inducing litigants to have their timely responses returned and then seek judgments on default, which is pitiful.


Furthermore, defendant McMillan acted vindictively when he turned me over to the S.C. Attorney General's Office to trigger an investigation based on some cockamamie Medicaid fraud, which I never committed. See defendant McMillan's email to me dated 5/31/12. In other words, he seemingly used confidential information to extort me to avoid paying his bill, which *idem* caused me emotional distress. Please, see enclosed herewith Hilton Head Psychiatrist William Westmass M.D.'s Psychiatric Evaluation Report, where he explains the accumulating effects of PTSD (Post Traumatic Stress Disorder), and also see under "Mental Status & Formulation" where he states: *He [Pastene] is an*

*intelligent man with intact memory. He has a well groomed appearance and a self-disciplined personality. I did not find any paranoia or delusional thinking, which contradicts defendant McMillan, who is **not** (bolded for emphasis) a Psychiatrist, but seemingly wishes to play one before these honorable courts, who accused me of being *certifiably insane and in need of urgent mental health evaluation... see defendant McMillan's email to me dated 5/31/12, appended to my letter to Judge Simmons dated 6/7/12*, to further discredit me before these courts (as if embarrassing me with the S.C. Attorney General's Office had not been bad enough...) Defendant McMillan should be held to a higher standard.*

Please recall that, previously I had been unfairly dispossessed off my real estate property by "good ole boys" of Jasper County, S.C, which was an important part of my life and vital source of retirement after having prepared for and worked so hard for the better part of my life, which left me practically destitute, except for social security, until I was able to secure basic employment in 2013 after having remained unemployed since 2011; a nightmare.

Wherefore, I respectfully request that, the defendants' counter-lawsuit is dismissed; the Order on default is reconsidered and reversed; and a trial date is set, so, that justice can be done between the parties.

Sincerely,

A handwritten signature in black ink, appearing to be the name 'W. Westmaas', written in a cursive style.

Encl. **Psychiatric Evaluation Report** dated 7/28/2015, by HHI Psychiatrist William Westmaas, M.D.

cc. Attorney David Wilson for defendant M.R. McMillan and Synergy Spine Ctr., 200 Whitsett St. Suite B, Greenville, S.C., 29601. Tel. 864-232-2329 and 864-855-4329.

Oconee County Clerk of Court, Walhalla, S.C.

Please check to see  
& return to me  
Thank you

Alexander Pastene  
P.O. Box 22298  
Hilton Head Island, South Carolina, 29925  
843-605-5266

Honorable J. Cordell Maddox, Jr.  
P.O. Box 8002  
Anderson, SC 29622

Case # 2012-cp-37-00902  
Pastene v. McMillan

FILED 02/11/14 08:50  
BENJAMIN W. FIELD  
CLERK OF COURT  
2014 AUG 11 PM 1 25

Dear Judge Maddox

I hope you are doing well.

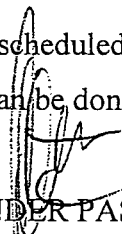
In a good cause hypocrisy becomes virtue; which is emblematic of the case at bar where Dr. McMillan and his attorney David Wilson seem to have decided to go beyond what is fair and "American" and pursue the banana republic route that I happen to have lived and know rather well.

In an effort to avoid paying his bill Dr. McMillan—who should be held to a higher standard— attempted to intimidate me (his patient at that time) with extortive emails, and may have filed a vicious complaint against me before the SC Attorney General's Office, who despite having purportedly been "investigating me" has come out empty, insomuch that I have not done anything wrong.

Clearly, after a trial before Oconee Magistrate Simmons defendant McMillan may have sensed that he was losing the case, so, he retained a new attorney and removed it to Common Pleas by filing a frivolous countersuit, meanwhile I remain unpaid for over the last two years. Finally, Dr. McMillan failed to notify me of this Honorable Court's Order of 6-13-2014 that came to my attention only through the Clerk of Court, thus, his motions should be dismissed.

I am confident that you will see through defendant Dr. McMillan's procedural rigmaroles, reverse what seems like an erred Order For Default Judgment clocked 6-17-14, and allow a trial before a jury as was originally scheduled for December 2013, so, that the case can be decided on the merits and justice can be done between the parties.

Sincerely,

  
ALEXANDER PASTENE, *pro se*  
P.O. Box 22298  
Hilton Head Island, SC 29925  
843-605-5266

cc. Attorney David A. Wilson  
Oconee Clerk of Court

- Encls. (1) PLAINTIFF'S RESPONSE TO DEFENDANT'S SUMMONS & NOTICE,  
ANSWER AND COUNTERCLAIM, dated September 12, 2012.
- (2) PLAINTIFF'S LETTER TO JUDGE MACAULAY dated 11-21-12.

- 
- (1) Please note that the Plaintiff **did respond** (bolded for emphasis) to defendants Summons & Notice, Answer and Counterclaim dated September 6, 2012, on September 12, 2012, i.e., six (6) days after receiving the Counterclaim. Moreover, attorney Wilson was sent copy of said Response enclosed to his letter to Judge MacAulay dated 11-21-12.
- (2) Please note that, in letter to Honorable Judge MacAulay, dated 11-21-12, Plaintiff explained to Judge MacAulay that he had indeed responded to defendants' Motion for Default. Moreover, in that same letter the Plaintiff indicated that the defendants' had failed to respond to the Plaintiff's Answer demanding strict proof, which proof never materialized.