



sufficed in proving Mr. Martinez innocence and any competent attorney would have conducted himself to applying the proper motions for using them in court. In fact, Mr. Smith not only failed to review the evidence he also managed to “lose” it, such carelessness and idiocracy is not expected as representation from such a noble profession.

## SPOLIATION OF EVIDENCE

Spoliation of evidence is an act that is prohibited by American Bar Association’s Model Rules of Professional Conduct, Rule 37 of Federal Rules of Civil Procedure, and Title 18 United States Code. Sanctions for spoliation are preventative, punitive and remedial in nature. Separate tort actions are also permitted.

American Bar Association Rule 3.4 prohibits a lawyer from destroying or assisting another in destroying evidence pertaining to a case. Likewise Title 18 of United States Code Sections 1503, 1510, 1512 and 1519 prohibits a party from destroying or assisting another in destroying evidence, and provides for criminal prosecution against the wrongdoer. Under Title 18 United States Code Section 1519, a wrongdoer can be fined in huge amounts and imprisoned up to 20 years.

The spoliation of evidence is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a legal proceeding. Which is precisely what attorney Fletcher Smith did in this trial, myself Jesse Martinez and my father, and his client, Jesus Martinez produced many articles of evidence to Mr. Smith months before the trial, these evidences included over 30 pages of emails, contracts, insurance documentation, and the original tape recorder with recordings of nearly every meeting between the defendant Mr. Jesus Martinez and the accuser Mr. Floyd Mills. Now, Mr. Smiths ulterior motive is uncertain but what is certain is his negligence and recklessness for withholding such valuable material toward the case that his sole duty was to represent and defend. Such material and evidence that could have very well easily proved the innocence of my father, Jesus Martinez who was found guilty. In fact Attorney Smith never even presented any evidence whatsoever, nor did he show the proficiency and skill of a trained lawyer, he never even cross examined any of the witnesses. Mr. Smith openly admitted to never viewing and “losing” all of the evidences brought to him, including the original tape and tape recorder. Furthermore failing to provide adequate and professional attorney-client services.

## ATTORNEY MISCONDUCT

Rule 8.4 of the Model Rules of Professional Conduct contains the following statements on attorney misconduct. “It is professional misconduct for a lawyer to: Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; Engage in conduct involving dishonesty, Fraud, deceit or misrepresentation.” The model rules set forth specific guidelines defining the attorney-client relationship. An attorney will be guilty of misconduct, for example, if she or he fails to provide competent representation to a client, to act with diligence and promptness regarding a client's legal concerns, or to keep a client informed of legal proceedings. This is precisely what attorney Fletcher Smith has avertedly done, he has lied and deceived and committed a criminal act by doing so as well. Aside from withholding evidence, Mr. Smith has failed to act with diligence and promptness concerning both the case and the appeal as well. Mr. Smith has missed deadlines and has constantly petitioned for time extensions, his lack for representation is by definition everything a professional law upholding attorney should not be. During the appeal itself attorney Fletcher Smith has missed the initial transcript order deadline, nearly having the case dismissed; he has consistently failed to review the case and thus petitioning for time extensions and costing the case many months. Lastly Mr. Smith has also failed his legal duties by failing to keep us informed of the legal proceedings and the case in general. We received no email replies and no

case updates, Mr. Smith acted upon himself and did as he thought fit without consulting his client, Mr. Jesus Martinez. Nor was there any attorney-client conjugal visits or telephone calls made throughout the entire case, no insight on the trial; In fact I Jesse Martinez had to inform the attorney on the court's decision because he was not expecting it until next year.

## NEGLIGENCE

Lack of research and effort on the part of your attorney, he failed to review the case Attorney Fletcher Smith has also paid tribute to negligence, he has made glaringly obvious errors that a professional in his or her field should have never made, alongside of mishandling and losing vital case proving evidence, he failed to properly represent his client, Mr. Jesus Martinez. Mr. Smith repeatedly mistook his client for somebody else, calling him Jose Martinez throughout the trial (transcript page 22). There was also a great lack of research and effort on the part of the attorney. Mr. Smith failed to review the case properly because otherwise he would have known his clients name. In addition Mr. Smith admittedly stated that he not once looked over the evidence that was given to him, over 30 pages in emails and an organized log of recorded phone calls between Mr. Martinez and the accuser Mr. Floyd Mills; which would have proven to the court that the accuser was lying under oath and proven most if not all of his statements and accusations to be false. Further negligence being that my attorney, Mr. Smith has failed to contact me with updates on the case and has left many emails unattended for a long period of time, in fact I never received a reply to any of my emails, he claims his "system has been down," after 2-3 years I'd expect one reply.

## CONCLUSION

Jesus Martinez rights were violated in both the original trial and the appeal. Mr. Martinez received incompetence of the original defense attorney resulting in a prejudice against the defendant, and prosecutorial misconduct, withholding evidence that would have surely proven the defendant's innocence. Mr. Fletcher Smith, the attorney, had possession of the tape recorders that would have proven Mr. Mills testimony's to be a forgery and fraudulent. Mr. Smith openly admitted during trial to never once hearing them (tape recorder), he also had possession of vital documents both emails, contracts and insurance documentation that would have proved for a successful trial. Further incompetence being that the attorney Fletcher Smith could not even remember the clients name during trial (Transcript page 22). For these reasons Negligence, Incompetence, Malpractice, Breach of Fiduciary Duty, Spoliation of Evidence and Attorney Misconduct is that I ask the courts consideration in the suspension or disbarment of Attorney Fletcher Smith Jr. and the opportunity for Post-Conviction Relief motion for a fair and just trial with a competent and skillful defense.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
**IN THE MATTER OF:** )  
 )  
JESUS MARTINEZ VARGAS, APPELLANT, )  
 )  
V. )  
THE STATE, RESPONDENT. )  
 )  
(Decedent) )

IN THE PROBATE COURT

CASE NUMBER: 2016-000527

**RECEIVED**  
JAN 22 2018  
SC Court of Appeals

**MOTION TO**

- WITHDRAW AS ATTORNEY
- SUBSTITUTE ATTORNEYS
- REMOVE AN ATTORNEY

Movant: JESUS VARGAS MARTINEZ

1. The undersigned request(s) that this Court order (*check the one that applies*)

- that he/she be permitted to withdraw as attorney for \_\_\_\_\_
- that \_\_\_\_\_ be substituted for him/her as attorney for \_\_\_\_\_
- that FLETCHER N. SMITH, JR. be removed as attorney for JESUS VARGAS MARTINEZ

in the above-referenced matter.

2. Movant(s) make(s) this Motion (*check the one that applies*)

- with the consent of his/her client(s) as evidenced by his/her/their signature(s) on page 2
- with the consent of his/her client(s) and proposed succeeding counsel as evidenced by their signatures below
- for the following reason(s) (*see Rule 1.16, Rules of Professional Conduct; attach extra pages, if needed*):  
NEGLIGENCE, INCOMPETENCE, MALPRACTICE, BREACH OF FIDUCIARY DUTY, SPOILATION OF EVIDENCE AND ATTORNEY MISCONDUCT

Executed this 17 day of JANUARY, 2018.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Relationship to  
Decedent/Estate: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Relationship to  
Decedent/Estate: \_\_\_\_\_

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**ORDER FOR HEARING**

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_  
PLACE: \_\_\_\_\_

Pursuant to SCPC 62-1-401, **THE MOVANT(S) IS/ARE ORDERED** to give notice of this hearing to all other interested persons by mailing or delivering his/her/their Notice of Hearing (FORM #326ES) and appropriate attachments to each of them at least twenty (20) days prior to the Hearing date. **PLEASE TAKE NOTICE** that a copy of this order is neither a substitute for the Notice of Hearing, nor one of the "appropriate attachments". **THE MOVANT(S) IS/ARE FURTHER ORDERED** to file his/her/their Proof of Delivery (FORM #120PC) of said Notice of Hearing no later than the hearing date.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Probate Court Judge

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**ORDER**

IT IS HEREBY ORDERED that this application be  GRANTED  DENIED and

- that he/she is permitted to withdraw as attorney for \_\_\_\_\_
- that \_\_\_\_\_ be substituted for \_\_\_\_\_  
as attorney for \_\_\_\_\_
- that \_\_\_\_\_ be removed as attorney for \_\_\_\_\_
- that \_\_\_\_\_ shall continue representation as attorney for \_\_\_\_\_

in the above-referenced matter. Written notice of change of attorney, if granted, must be served as provided by Rule 5, SCRCP. If representation is terminated, the attorney shall take steps to the extent reasonably practicable to protect his/her client's interests.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Probate Court Judge

**I/WE CONSENT:**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

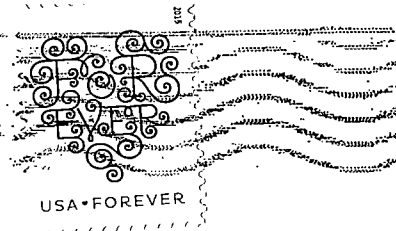
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Jesse Martinez  
3736 Todd Quarter rd  
Waterloo, SC 29384

**RECEIVED**

JAN 22 2018  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211



29211-162929

