

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-02403
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

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SC Court of Appeals

INITIAL BRIEF OF APPELLANT

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Constitution:

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

Article I. Bill of Rights

SECTION 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.

SECTION 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

SECTION 9. Courts; speedy remedy.

All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.

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STATEMENT OF ISSUES ON APPEAL

- I. The pending Notice of Appeal (NOA) vested jurisdiction in the appellate court.
- II. Defendants admit lack of standing.
- III. Controlling precedent requires reversal for failure to comply with Rule 6, SCRPC.
- IV. Controlling precedent requires reversal due to failure to timely submit proposed orders to the other side.
- V. The disputed motion entered September 29, 2017, is based on Defendants false statements and/or misrepresentations that order is reversible as a matter of law due to material error of law and fact.
- VI. Pursuant to controlling precedent, “all orders rendered after the ex parte contacts should be vacated.” *See Burgess v. Stern, infra*.
- VII. Controlling precedent in *Brooks, infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts.
- VIII. Reliance on a 2009 order from an unrelated case with different caption and different parties involving conflict of laws and the statute of limitations in a foreign jurisdiction is improper.
- IX. The order entered September 29, 2017, and all prior orders are appealed including, but not limited to, the order(s) of reference and order entered February 9, 2017.
- X. The June 23, 2017, contempt order stands on its own, is separate and distinct from the underlying action, and is unrelated to any prior matter.
- XI. Notice of Appeal (NOA) of the February 9, 2017, order was pending vesting jurisdiction in the appellate court.
- XII. Any dispute regarding appellate jurisdiction is resolved in the appellate court.
- XIII. Despite statements in the February 9, 2017, order to the contrary, there was no hearing, no notice, and no opportunity to be heard.
- XIV. The February 9, 2017, order falsely declares it was issued pursuant to a hearing, purports to illegally unfile already served, filed, and docketed motions designated for another Circuit Court Judge, and illegally confiscates unearned filing fees.
- XV. Notice of Appeal (NOA) of the February 9, 2017, order was served on February 11, 2017, and must be immediately appealed or waived.
- XVI. This appeal includes challenge to the efficacy of the order of reference. Defendants failure to provide mandatory filing fees is a fatal flaw.

XVII. This appeal includes challenge to the efficacy of the order of reference. Defendants proposed Rule to Show Cause is void on its face because Defendants have no authority to deny the rule of law, appellate jurisdiction, and access to the South Carolina Court of Appeals.

XVIII. This appeal includes challenge to the efficacy of the order of reference. The failure to support the rule to show cause by verified petition is a fatal defect.

XIX. There is no jurisdiction due to pending Rule 60, SCRPC, Motion.

XX. Motion to Dismiss is pending and the Disputed, Unverified Petition should be dismissed.

XXI. Due to pending Rule 59(e), SCRPC, Motion, the orders on appeal should be reversed.

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

XXIII. Public policy prohibits two orders on the same petition by two different judges as unfair, improper, unconscionable, and denial of due process and equal protection.

XXIV. The record reflects the Appellant appeared as requested for the RTSC (rule to show cause) hearing with the requested information, and Appellant requested hearing under oath which was denied.

XXV. Defendants failed to provide timely notice of the motion for contempt.

XXVI. Defendants failed their burden of proof and presented no evidence.

XXVII. There has been no finding on ability to pay and Defendants confirmed receipt of Appellant's financial information on the record.

XXVIII. The June 23, 2017, order grants relief that was not requested and that is inconsistent with the hearing; malpractice Defendants, untrustworthy officers of the Court, failed and refused to timely copy the other side with the proposed order.

XXIX. Pro Se Malpractice Defendants are not entitled to attorney's fees.

XXX. Undivided interest in the marital home which houses child(ren) of the marriage who are in school is in the exclusive jurisdiction of the family court.

XXXI. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment within the contemplation of S.C. Code Section 18-9-130. A novel question is raised of constitutionality of summary application by rule to show cause pursuant to amended S.C. Code Section 15-36-10 and/or incidental matter.

XXXII. The Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied.

XXXIII. When deciding a jurisdictional question based on facts, a reviewing court has the duty to review the entire record and find the jurisdictional facts within the entire record.

XXXIV. Novel issues are raised regarding new legislation and new statutory law.

XXXV. A corporation is not allowed to appear Pro Se in contested matters.

STATEMENT OF THE CASE

The September 29, 2017, order on appeal was wrongfully entered in the circuit court while appeal was pending. See Notice of Appeal (NOA). There was no Remittitur. The pending appeal vests jurisdiction in the appellate court and that jurisdiction is exclusive. Defendants knew or should have known to petition the appellate court for permission to file in the circuit court pending appeal, suggesting willful disregard for the South Carolina Rules of Court and the rule of law. Accordingly, that order is void for lack of jurisdiction and should be vacated/reversed.

Further, in the Motion for that September 29, 2017, order, Defendants admit they have no interest and, therefore, no standing. Pursuant to Correspondence by the Court of Appeals dated February 24, 2017, the only Respondents to the appeal are the Defendants, who now concede they have no standing. Moreover, Defendant corporation is not allowed to represent itself in this contested matter. Accordingly, the order on appeal and all prior orders should be vacated/reversed.

In addition, Defendants fail and refuse to provide timely notice. There is no Certificate of Service for the September 29, 2017, order on appeal. Rooted in basic fundamental fairness, if not the Golden Rule, no motion is proper for the Court to consider without valid Certificate of Service because due process mandates it. The orders are void as impermissible ex parte orders. There are no emergency or exigent circumstances warranting ex parte proceeding, application, or order. Defendants have not claimed any emergency or exigent circumstances, and there is no recitation in the order of emergency or exigent circumstances. The Appellant is prejudiced thereby. Appellant requested opportunity to be heard and requested due process regarding the contested motion with disputed claims. The case of *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (S.C., 1991), mandates reversal for failure to comply with Rule 6, SCRPC, and for violation of timely notice requirements. That case, in pertinent part, is as follows:

Respondent moved for summary judgment in his mortgage foreclosure action against appellant Bobby W. Strickland. Respondent's Notice and Motion for Summary Judgment were filed and served on April 13, 1989. The motion was set for hearing before Judge David H. Maring on May 8, 1989. The exact date is controverted, bu

t notice of the hearing was mailed May 3 or 4, 1989.

Counsel for all parties appeared on May 8, 1989. The appellant was not present. At the hearing, appellant's counsel asserted that the notice of the hearing was postage metered on May 3, 1989, postmarked May 4, 1989, and received by him on May 6, 1989. He contended that the Notice of Motion and Motion dated April 13, 1989, did not constitute sufficient notice of the hearing, and that the late notice had deprived him of the opportunity to timely submit opposing affidavits and to have the appellant present. Additionally, appellant's counsel asserted that the record was incomplete since interrogatories propounded April 19, 1989, had not been answered by the respondent.

Counsel for appellant moved for a continuance in order to submit affidavits and to have the appellant present at the hearing. Judge Maring granted a continuance to May 12, 1989, but ruled that appellant was barred from submitting affidavits, other documents or testimony because the time for filing opposing affidavits expired on May 8, 1989.

On May 12, 1989, Judge Maring was unable to hear the motion and rescheduled the hearing for May 29, 1989, before Judge Walter J. Bristow. Judge Maring's rescheduling order dated May 12, 1989, noted the objection of appellant's counsel to the proceeding and apparently relied upon service of the Notice of Motion and Motion dated April 13, 1989, as constituting adequate notice of the motion hearing. Additionally, the order contained a finding that respondent's rights would be materially prejudiced if the appellant were allowed to interpose opposing material.

On May 29, 1989, Judge Bristow conducted the hearing in accordance with Judge Maring's orders and granted summary judgment in favor of respondent. A Motion For New Trial or Amendment of Judgment was filed on behalf of the appellant and denied by Judge Bristow. This appeal followed.

Appellant alleges the circuit court erred in barring the submission of affidavits in opposition to the motion for summary judgement and in allowing the summary judgment proceedings to continue despite lack of adequate notice to the appellant. We agree.

Notice requirements and time limitations are governed by the South Carolina Rules of Civil Procedure. Rule 6, SCRCP, provides in pertinent part:

(d) A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court. When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time.

(e) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

Notwithstanding service of the notice and motion dated April 13, 1989, **we construe the rule to require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to such hearing unless the exceptions stated in Rule 6(d), SCRCP, apply.**

It is undisputed that notice of the hearing scheduled for May 8, 1989, was mailed no earlier than May 3, 1989. Although the motion was not heard until May 29, 1989, Judge Maring's order precluded appellant from submitting opposing material after May 8, 1989, at which time interrogatories propounded April 19, 1989, had not yet been answered and the time for responding had not expired.

We find that the appellant did not receive timely notice of the motion hearing as required by Rule 6(d), SCRCP, that he was wrongfully denied the opportunity to submit affidavits, documents or testimony opposing respondent's motion for summary judgment, and that the rights of the appellant were prejudiced thereby. *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (S.C., 1991). (Emphasis supplied.)

Accordingly, the order on appeal herein and all prior orders should be vacated/reversed. *See Turner v. Rogers*, 564 U.S. 431 (2011).

Likewise, Defendants failed and refused to timely provide the proposed order to the other side, thereby denying the other side due process and opportunity to be heard. In even-handedness and fairness, Defendants should and would themselves object to failure to provide a proposed order in a timely manner if the other side failed to do so, thereby denying due process, and denying opportunity to be heard. The order on appeal and all prior orders should be vacated/reversed.

Moreover, the disputed motion falsely represents that the other side has no claims when Defendants are well aware that the Appellant made multiple equitable and other claims. Further, the February 9, 2017, order is appealed and was used to prevent and/or thwart Appellant's claims and other rights herein. *See Dedes v. Strickland, supra*. Accordingly, the order on appeal and all prior orders should be vacated/reversed.

Similarly, the February 9, 2017, order is appealed as a denial of the federal and State statutory and Constitutional right to due process and to self-representation. *See Brooks, infra*. The orders are immediately appealable as they fall within the statutory definition of a substantial right under S.C. Code Section 14-3-330(2)(a). The Appellant is prejudiced including, but not limited to, denial of State and federal constitutional rights and denial of opportunity to establish Respondent's violation of legal interest and other claims. *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, pursuant to new case law in *Brooks, supra*, as well as *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the orders on appeal are immediately appealable and must be immediately appealed. As per *Toal et al, Appellate Practice in South Carolina*, 3rd edition, 2016, the 2017 orders on appeal are immediately appealable, because such orders fall within the statutory definition of a substantial right under section 14-3-330(2)(a). The orders are immediately appealable as orders which could determine the action and prevent a judgment from which an appeal might be taken or could discontinue an action or could essentially deny a well-established substantial right closely related to the right to a particular mode of trial. Accordingly, the orders are immediately appealable and must be immediately appealed. *See Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Toal et al, Appellate Practice in South Carolina*, 3rd edition, 2016; *Burgess v. Stern*, 311 S.C. 326, 448 S.E.2d 880 (SC 1992) (“**all orders rendered after the ex parte contacts should be vacated**”).

Controlling precedent in *Brooks, 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. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). Accordingly, “all orders rendered after the ex parte contacts should be vacated.” *Burgess v. Stern*, 311 S.C. 326, 448 S.E.2d 880 (SC 1992)

In addition, the Appellant respectfully submits reliance on a 2009 order *Doe v. Duncan* (hereinafter DVD) from an **unrelated case with different caption and different parties** involving conflict of laws and the statute of limitations in a foreign jurisdiction is improper. In *Mizell v. Glover*, the South Carolina Supreme Court found:

“We find persuasive the jurisprudence developed by the Fourth Circuit and other federal courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320 (E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. Id. (Citing 5 John H. Wigmore, *Wigmore on Evidence* § 1671a (James H. Chadbourn rev.1974) (citations omitted)).”

“The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Tieco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility determinations).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002).

Reliance on extrinsic material from an unrelated case is reversible error, and the Appellant is prejudiced

thereby.

Moreover, the circuit court recognized that 2009 order, DVD, is broad and Appellant respectfully submits it is overbroad, not supported by the record on appeal in that or any other case, entered sua sponte without notice and without opportunity to respond, fails to provide citation, source, or authority, and cannot pass constitutional muster. The *Brooks* case, *supra*, confirms colorable constitutional concerns. Accordingly, the orders on appeal should be vacated/reversed. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

Moreover, the orders on appeal are based on the Amended S.C. Code Section 15-36-10 (hereinafter FPA) which is unconstitutional on its face and as applied herein and this Court should so find. This Court is respectfully requested to uphold the solemn oath taken to preserve and protect State and federal Constitutional rights, not deny them.

Since Defendants have raised the December 2009 order, DVD, in an unrelated case with unrelated caption and unrelated parties, pertinent circumstances surrounding that order are as follows. The underlying case in the malpractice claim was transferred from federal court to State Court. See Federal Court Order finding Defendants failed to timely file appeal of the loss of the injunction

reversing the status quo and causing irreparable damages. Claiming they did not like practicing in State Court, Defendants drafted a State Court complaint and advised Plaintiff how to file it *pro se*. Thereafter, the Circuit Court Judge, who was later promoted to Court of Appeals Judge, denied Defendant's motion for summary judgment, and the case was resolved in Plaintiff's favor. This malpractice claim was filed, including but not limited to, claims for abandonment. The case ended in wrongful directed verdict. There was no counterclaim and no money judgment on the underlying claim. But for the unconstitutional retroactive application of the amended S.C. Code Section 15-36-10 (hereinafter FPA), we would not be here. Novel issues are raised and the amended FPA is unconstitutional on its face and as applied herein.

At trial in the underlying case, Defendants failed to extend professional courtesy for Plaintiff's trial counsel to appear after he had re-located to Washington State. 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 Trial Transcript excerpt of Professor John Freeman's testimony. A jury should and would reasonably find that Defendants' 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. Trial transcript available upon request. Further, Defendants materially fail to disclose the fact that Defendants motion for summary judgment was DENIED, precluding a finding that the case is frivolous and precluding sanctions. Moreover, Defendants materially fail to disclose the dissenting opinion of the reasonable jurist, former Chief

Justice Pleicones, then Justice, thereby refuting Defendants baseless allegations of frivolity under the reasonable attorney standard, even assuming though not admitting that the less burdensome reasonable attorney standard is applicable. See Transcript Excerpt of Oral Argument. Any well-trained Physician would and should adamantly object.

Defendants mailed the *pro se*, so-called verified petition to the Appellant on December 19, 2016. Defendants *pro se*, unverified 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 itemized, verified, or proper. Strict compliance with the South Carolina Rules of Civil Procedure, statutory, and case law is required for summary application. Defendants did not counterclaim in the underlying professional negligence claim, thereby waiving counterclaim, if any. The matter herein is incidental to the underlying claim and is not a traditional money judgment in the underlying claim. Defendants have unclean hands, and have now admitted on the record they have no interest and no standing. Plaintiff respectfully submits Defendants *pro se*, disputed, unverified petition should be dismissed.

Significantly and materially, the less burdensome legal standard in the Amended FPA was improperly applied and is reversible as a matter of law. Though that improper circuit court Haynsworth order was stayed pending appeal, it was wrongfully reported to the appellate court and ODC during that stay purportedly pursuant to the inapplicable Amended S.C. Code Section 15-36-10 reporting provision. That improper FPA report effectively functioned as impermissible ex parte communication, thereby preventing and/or thwarting objective judicial review. That improper FPA report resulted in the unsupported December 2009 order, Doe v. Duncan. That DVD case is unrelated, it has a different caption, and it involves unrelated issues of conflict of laws and the statute of limitations in a foreign

jurisdiction. That DVD order recites and relies on footnote 2 (two), but fails to provide any citation, source, or authority for footnote 2 (two), thereby concealing Haynsworth as the source. Thereafter, that unsupported DVD order in an unrelated case was used to thwart objective, meaningful appellate review of that very circuit court Haynsworth order on appeal. As set forth below, that unsupported DVD order in an unrelated case has been used wrongfully by *Pro Se* Legal Malpractice Defendants to deny State and federal Constitutional and Statutory rights, including but not limited to, the right to appear *pro se* and to represent oneself. *See Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017 (Remittitur sent March 3, 2017).

The FPA is unconstitutional on its face and as applied herein. Controlling precedent establishes that the Amended FPA is inapplicable because the cause of action arose prior to its effective date. *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). The Rules of Court shall be construed to do substantial justice and *Pro Se* Legal Malpractice Defendants have misused and abused their position as officers of the court to escape the merits and evade objective, meaningful judicial review. Accordingly, the orders on appeal should be vacated/reversed.

STANDARD OF REVIEW

The issue of interpretation of statutes is a question of law for the court. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007). Questions of law are reviewed de novo. S.C. Const. art. V, § 5. In cases of equity, the appellate court shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside. S.C. Const. art. V, § 5.

ARGUMENT

I. The pending Notice of Appeal (NOA) vested jurisdiction in the appellate court.

The September 29, 2017, order on appeal was wrongfully entered in the circuit court while appeal was pending. See Notice of Appeal (NOA). There was no Remittitur. The pending appeal vests jurisdiction in the appellate court and that jurisdiction is exclusive. Rule 205, SCACR. Defendants knew or should have known to petition the appellate court for permission to file in the circuit court pending appeal, suggesting willful disregard for the South Carolina Rules of Court and the rule of law. Accordingly, that order is void for lack of jurisdiction and should be vacated/reversed.

II. Defendants admit lack of standing.

Further, in the Motion for that September 29, 2017, order, Defendants admit they have no interest and, therefore, no standing. Pursuant to Correspondence by the Court of Appeals dated February 24, 2017, the only Respondents to the appeal are the Defendants, who now concede they have no standing. Moreover, Defendant corporation is not allowed to represent itself in this contested matter. Accordingly, the order on appeal and all prior orders should be vacated/reversed. *Georgetown Cty. League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 713 S.E.2d 287 (S.C. 2011).

III. Controlling precedent requires reversal for failure to comply with Rule 6, SCRPC.

In addition, Defendants fail and refuse to provide timely notice. There is no Certificate of Service for the September 29, 2017, order on appeal. Rooted in basic fundamental fairness, if not the Golden Rule, no motion is proper for the Court to consider without valid Certificate of Service because due process mandates it. The orders are void as impermissible ex parte orders. The Appellant is

prejudiced thereby. Appellant requested opportunity to be heard and requested due process regarding the contested motion with disputed claims. Controlling precedent in *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (S.C., 1991), requires reversal for failure to comply with Rule 6, SCRCPP, and violation of timely notice requirements. That case, in pertinent part, is as follows:

Respondent moved for summary judgment in his mortgage foreclosure action against appellant Bobby W. Strickland. Respondent's Notice and Motion for Summary Judgment were filed and served on April 13, 1989. The motion was set for hearing before Judge David H. Maring on May 8, 1989. The exact date is controverted, but notice of the hearing was mailed May 3 or 4, 1989.

Counsel for all parties appeared on May 8, 1989. The appellant was not present. At the hearing, appellant's counsel asserted that the notice of the hearing was postage metered on May 3, 1989, postmarked May 4, 1989, and received by him on May 6, 1989. He contended that the Notice of Motion and Motion dated April 13, 1989, did not constitute sufficient notice of the hearing, and that the late notice had deprived him of the opportunity to timely submit opposing affidavits and to have the appellant present. Additionally, appellant's counsel asserted that the record was incomplete since interrogatories propounded April 19, 1989, had not been answered by the respondent.

Counsel for appellant moved for a continuance in order to submit affidavits and to have the appellant present at the hearing. Judge Maring granted a continuance to May 12, 1989, but ruled that appellant was barred from submitting affidavits, other documents or testimony because the time for filing opposing affidavits expired on May 8, 1989.

On May 12, 1989, Judge Maring was unable to hear the motion and rescheduled the hearing for May 29, 1989, before Judge Walter J. Bristow. Judge Maring's rescheduling order dated May 12, 1989, noted the objection of appellant's counsel to the proceeding and apparently relied upon service of the Notice of Motion and Motion dated April 13, 1989, as constituting adequate notice of the motion hearing. Additionally, the order contained a finding that respondent's rights would be materially prejudiced if the appellant were allowed to interpose opposing material.

On May 29, 1989, Judge Bristow conducted the hearing in accordance with Judge Maring's orders and granted summary judgment in favor of respondent. A Motion For New Trial or Amendment of Judgment was filed on behalf of the appellant and denied by Judge Bristow. This appeal followed.

Appellant alleges the circuit court erred in barring the submission of affidavits in opposition to the motion for summary judgment and in allowing the summary judgment proceedings to continue despite lack of adequate notice to the appellant. We agree.

Notice requirements and time limitations are governed by the South Carolina Rules of Civil Procedure. Rule 6, SCRCPP, provides in pertinent part:

(d) A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by

an order of the court. When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time.

(e) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

Notwithstanding service of the notice and motion dated April 13, 1989, **we construe the rule to require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to such hearing unless the exceptions stated in Rule 6(d), SCRPC, apply.**

It is undisputed that notice of the hearing scheduled for May 8, 1989, was mailed no earlier than May 3, 1989. Although the motion was not heard until May 29, 1989, Judge Maring's order precluded appellant from submitting opposing material after May 8, 1989, at which time interrogatories propounded April 19, 1989, had not yet been answered and the time for responding had not expired.

We find that the appellant did not receive timely notice of the motion hearing as required by Rule 6(d), SCRPC, that he was wrongfully denied the opportunity to submit affidavits, documents or testimony opposing respondent's motion for summary judgment, and that the rights of the appellant were prejudiced thereby. *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (S.C., 1991). (Emphasis supplied.)

Accordingly, the order on appeal herein and all prior orders should be vacated/reversed.

IV. Controlling precedent requires reversal due to failure to timely submit proposed orders to the other side.

Likewise, Defendants failed and refused to timely provide the proposed order to the other side, thereby denying the other side due process and opportunity to be heard. In even-handedness and fairness, Defendants should and would object to failure to provide a proposed order in a timely fashion, to denial of due process, and to denial of opportunity to be heard. The order on appeal and all prior

orders should be vacated/reversed. *See Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (SC 1992).

V. The disputed motion entered September 29, 2017, is based on Defendants false statements and/or misrepresentations that order is reversible as a matter of law due to material error of law and fact.

Moreover, the disputed motion falsely represents that the other side has no claims when Defendants are well aware that the Appellant made multiple equitable and other claims. Further, the February 9, 2017, order is appealed and was used to prevent and/or thwart Appellant's claims and other rights herein. *See Dedes v. Strickland, infra*. The disputed motion is based on Defendants false claims and/or misrepresentations and that order is reversible as a matter of law for material error of law and fact. Accordingly, the order on appeal and all prior orders should be vacated/reversed. **"We find that the appellant did not receive timely notice of the motion hearing as required by Rule 6(d), SCRPC, that he was wrongfully denied the opportunity to submit affidavits, documents or testimony opposing respondent's motion for summary judgment, and that the rights of the appellant were prejudiced thereby."** *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (S.C., 1991). (Emphasis supplied.)

VI. Pursuant to controlling precedent, "all orders rendered after the ex parte contacts should be vacated." *See Burgess v. Stern, infra*.

Similarly, the February 9, 2017, order is appealed as a denial of the federal and State statutory and Constitutional right to due process and to self-representation. *See Brooks, infra*. The orders are immediately appealable as they fall within the statutory definition of a substantial right under S.C. Code Section 14-3-330(2)(a). The Appellant is prejudiced including, but not limited to, denial of State and federal constitutional rights and denial of opportunity to establish Respondent's violation of legal

interest and other claims. *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, pursuant to new case law in *Brooks, supra*, as well as *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the orders on appeal are immediately appealable and must be immediately appealed. As per *Toal et al, Appellate Practice in South Carolina*, 3rd edition, 2016, the 2017 orders on appeal are immediately appealable, because such orders fall within the statutory definition of a substantial right under section 14-3-330(2)(a). The orders are immediately appealable as orders which could determine the action and prevent a judgment from which an appeal might be taken or could discontinue an action or could essentially deny a well-established substantial right closely related to the right to a particular mode of trial. Accordingly, the orders are immediately appealable and must be immediately appealed. *See Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Toal et al, Appellate Practice in South Carolina*, 3rd edition, 2016; *Burgess v. Stern*, 311 S.C. 326, 448 S.E.2d 880 (SC 1992) (“all orders rendered after the ex parte contacts should be vacated”).

VII. Controlling precedent in *Brooks, infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts.

Controlling precedent in *Brooks, 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. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

VIII. Reliance on a 2009 order from an unrelated case with different caption and different parties involving conflict of laws and the statute of limitations in a foreign jurisdiction is improper.

The Appellant respectfully submits reliance on a **2009** order, DVD, from an **unrelated case** with **different caption** and **different parties** involving conflict of laws and the statute of limitations in a foreign jurisdiction is improper. In *Mizell v. Glover*, the South Carolina Supreme Court found:

“We find persuasive the jurisprudence developed by the Fourth Circuit and other federal courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320 (E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. Id. (Citing 5 John H. Wigmore, *Wigmore on Evidence* § 1671a (James H. Chadbourne rev.1974) (citations omitted)).”

“The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Tieco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility determinations).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002).

Reliance on extrinsic material from an unrelated case is reversible error, and the Appellant is prejudiced thereby.

The February 9, 2017, order recites and relies on a December 2009 order in DVD, an unrelated case. That December 2009 order is not applicable because the issues, parties, and caption are not the

same, and the matter herein is collateral to and not related to any prior matter. In that February 9, 2017, order, the Court found that the December 2009 order is broad. That order is unconstitutionally over-broad and not time limited. That December 2009 order is unrelated and involves conflict of laws and the statute of limitations in a foreign jurisdiction. It is not res judicata or collateral estoppel. That December 2009 order relies on footnote 2, but there is no citation, source, or authority for footnote 2. The content of footnote 2 was lifted from the *Haynsworth* circuit court order which was then stayed on appeal and later superseded on appeal. See the dissent in *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014). The December 2009 order on its face evidences the fact there is no record to support it. That December 2009 order in an unrelated Tennessee case quoted, but failed to cite, the *Haynsworth* circuit court order, thereby concealing Haynsworth as the source; that December 2009 order in an unrelated Tennessee case was then used to thwart and/or prevent meaningful judicial review and appeal of that very *Haynsworth* circuit court order in the same or similar fashion as it has been used to escape the merits in this matter. Novel issues of great public importance, including but not limited to, unconstitutional retroactive application of the revised S.C. Code Section 15-36-10 are raised. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). Accordingly, the orders should be reversed.

IX. The order entered September 29, 2017, and all prior orders are appealed including, but not limited to, the order(s) of reference and order entered February 9, 2017.

When a party timely files its notice of intent to appeal from a judgment, the appellate court may review any intermediate order necessarily affecting that judgment. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2dS 822 (Ct. App. 1999). Accordingly, the order entered September 29, 2017, and all prior orders are appealed including, but not limited to, the orders of reference and order entered February 9, 2017.

X. The June 23, 2017, contempt order stands on its own, is separate and distinct from the underlying action, and is unrelated to any prior matter.

It is well-settled that a party can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt. On appeal from the contempt order, the contemnor may argue that the contempt finding must be reversed because the underlying discovery order was itself improper. *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008). In this case, the Appellant did comply with the order as set forth more fully below, and there is no basis in fact for contempt. Further, the matter and the issues are unrelated to any prior matter including *Doe v. Duncan*. The efficacy of the order of reference herein is challenged, and the discovery order was itself improper.

Moreover, the case of *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009), supports appeal of the contempt order because this appeal is based on denial of State and federal constitutional rights, including but not limited to, the right to proceed pro se. *See Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). New case law in *Brooks, supra*, is controlling and confirms State and federal constitutional and statutory rights to appear pro se. The February 9, 2017, order denying Appellant's right to represent oneself necessarily affects all subsequent orders. Accordingly, the orders should be reversed.

XI. Notice of Appeal (NOA) of the February 9, 2017, order was pending vesting jurisdiction in the appellate court.

Notice of Appeal (NOA) of the February 9, 2017, order (Appellate Case Number 2017-000266) was pending at the time the orders on appeal were entered vesting jurisdiction in the appellate court. Pursuant to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the February 9, 2017, is

immediately appealable and “must be immediately appealed.” Because that February 9, 2017, order must be immediately appealed, the lower court proceeding is stayed as a matter affected by the appeal. Rule 205, SCACR, provides “Upon service of the notice of appeal, the appellate court shall have *exclusive jurisdiction* over the appeal.” (Emphasis supplied.) Because appellate jurisdiction is exclusive, the lower court had no jurisdiction. Accordingly, the lower court orders entered while that appeal was pending are void and should be vacated. See Notes to Rule 60, SCRCP (“An appeal is pending from the time the notice of appeal is served until the issuance of the remittitur. See Rules 203, 204, and 221(b), SCACR.”).

XII. Any dispute regarding appellate jurisdiction is resolved in the appellate court.

Any dispute regarding appellate jurisdiction is resolved in the appellate court. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). Controlling precedent provides that authority to resolve disputes concerning the application of automatic stays, such as in Appellate Case Number 2017-000266, does not reside in the lower court. *See Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). *See State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). 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. Upon service of the notice of appeal, the appellate court shall have **exclusive** jurisdiction over the appeal. Rule 205, SCACR (emphasis supplied). The final disposition of the appeal occurs when the remittitur is returned

by the clerk of the appellate court and filed in the lower court. Until that time the case is pending on appeal: *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994); *McDowell v. SC DSS*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989); Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 393.

The lower court proceeding, including discovery, is held in abeyance pending resolution of the appeal, in cases such as this, where there are no exigent or other circumstances and where none have been claimed. See Rule 27, SCRCP. Further, pursuant to *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000), no exception to automatic stay applies because the matter is incidental or collateral to the underlying claim and does not constitute a traditional money judgment on the underlying claim as contemplated by the statute, S.C. Code Section 18-9-130. In particular, the “decision of whether to award sanctions is a collateral issue and does not constitute a ruling upon the merits of the case. ...See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 394, 396, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990). *Pee Dee Health Care, P.A., v. Estate of Thompson*, 418 S.C. 557, 795 S.E.2d 40 (S.C.App. 2016). Any dispute regarding appellate jurisdiction is resolved in the appellate court. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). Accordingly, Appellant respectfully requests reversal of the orders.

XIII. Despite statements in the February 9, 2017, order to the contrary, there was no hearing, no notice, and no opportunity to be heard.

The February 9, 2017, order on appeal provides, "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." It is respectfully submitted the record reflects there was no hearing, no notice of any hearing, and, therefore, no opportunity to be heard. Furthermore, there is no record of any attempt to provide notice of any hearing. In fact, despite the statement declaring there was a hearing, the record reflects the ex parte order was entered at the behest of untrustworthy Pro Se Malpractice Defendants impermissible ex parte communication. That impermissible ex parte February 9, 2017, order was used to deny any meaningful opportunity to be

heard with respect to subsequent orders as well. Appellant is prejudiced thereby including, but not limited to, denial of discovery to establish violation of legal interest and denial of the right to assert claims, equitable and other. S.C. Code Section 15-39-330. The orders should be reversed or stricken. *See Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *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, 9, 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.

XIV. The February 9, 2017, order falsely declares it was issued pursuant to a hearing, purports to illegally unfile already served, filed, and docketed motions designated for another Circuit Court Judge, and illegally confiscates unearned filing fees.

That impermissible ex parte February 9, 2017, order was used to illegally confiscate unearned filing fees. The February 9, 2017, order on appeal provides, "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." It is respectfully submitted the record reflects there was no hearing, no notice of any hearing, and no opportunity to be heard. Despite the false statement declaring there was a hearing, the record reflects the ex parte order was entered at the behest of untrustworthy Pro Se Malpractice Defendants' impermissible ex parte communication. That impermissible ex parte February 9, 2017, order was used to deny the statutory and constitutional

right to represent oneself. It purports to illegally unfile already served, filed, and docketed motions designated for another Circuit Court Judge with sole jurisdiction such as the Rule 60, SCRCF, and Rule 59(e), SCRCF, motions, and illegally confiscates unearned filing fees. Moreover, that impermissible ex parte February 9, 2017, order is an unconstitutional taking by the State to benefit private parties who are Pro Se Legal Malpractice Defendants, untrustworthy officers of the court. Accordingly, the February 9, 2017, order and subsequent orders should be stricken/reversed. *See Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *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.

XV. Notice of Appeal (NOA) of the February 9, 2017, order was served on February 11, 2017, and must be immediately appealed or waived.

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. The appeal herein is a direct appeal.

Pursuant to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the February 9, 2017, order is immediately appealable and must be immediately appealed. As found in Toal *et al.*, *Appellate Practice in South Carolina*, 3rd edition, 2016, that 2017 order on appeal is immediately appealable because such order falls within the statutory definition of a substantial right under section 14-3-330(2)(a). The order is immediately appealable as an order which could determine the action and prevent a judgment from which an appeal might be taken or could discontinue an action or could essentially deny a well-established substantial right closely related to the right to a particular mode of trial. Accordingly, the order is immediately appealable and must be immediately appealed or waived. S.C. 354, 527 S.E.2d 742 (1999); Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 11.

Moreover, the February 9, 2017, order on appeal provides, "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." It is respectfully submitted there was no notice of any hearing and, therefore, no opportunity to be heard. There is no record of any hearing having been held. Appellant is prejudiced thereby and requests meaningful opportunity to be heard. The order on appeal fails to acknowledge the previously filed and currently pending Rule 60, SCRCP, which should be heard first. It also fails to acknowledge the Charleston County Clerk of Court's policy, as per her correspondence, of following the South Carolina Rules of Court and recognizing that jurisdiction for any pending Rule 59(e), SCRCP, Motion resides with the Presiding Judge who issued the order (the author of the February 9, 2017, order on appeal which addresses the Rule 59(e), SCRCP, Motion is not the Presiding Judge who issued the order which is the

subject of the Rule 59(e), SCRCP, Motion). As such, the order is based on error of material fact and/or law and should be reversed.

In addition, that February 9, 2017, order on appeal establishes that the lower court determined the unrelated December 2009 order to be broad. It is over-broad and not time-limited. As such, the 2009 order cannot pass constitutional muster. Appellant submits that the order on appeal denies one party any meaningful opportunity to respond while essentially anointing Pro Se Legal Malpractice Defendants and their self-serving, false, unverified petition in violation of statutory mandates. 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). Accordingly, the orders should be vacated/reversed. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XVI. This appeal includes challenge to the efficacy of the order of reference. Defendants failure to provide mandatory filing fees is a fatal flaw.

Untrustworthy Defendants have apparently failed to pay the Clerk of Court the statutorily mandated filing fees, thereby requiring that the unverified petition be stricken and/or dismissed. There

were two different orders by two different judges but only one filing fee and no additional required fees thereafter. There is no record of payment of additional required fees. Without the filing fees, there is no legal authority, no legal process, and no jurisdiction. Unauthorized actions are deemed unofficial and, thereby, carried out in unofficial and/or individual capacity. Accordingly, the order of reference as well as subsequent orders should be dismissed/reversed. *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).

XVII. This appeal includes challenge to the efficacy of the order of reference. Defendants proposed Rule to Show Cause is void on its face because Defendants have no authority to deny the rule of law, appellate jurisdiction, and access to the South Carolina Court of Appeals.

Defendants Rule to Show Cause purports to deny the Appellant access to appeal to the South Carolina Court of Appeals. As such, it is void on its face because Defendants have no authority to deny litigants the rule of law, appellate jurisdiction, and 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. Accordingly, the order of reference and subsequent orders should be dismissed/reversed.

XVIII. This appeal includes challenge to the efficacy of the order of reference. 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). 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. Accordingly, the order of reference and subsequent orders should be dismissed/reversed. *See Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural

fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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, 9, 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.

XIX. There is no jurisdiction due to pending Rule 60, SCRPC, Motion.

The pending Motion Pursuant to Rule 60, SCRPC, was filed before Defendant's unverified, false petition and is pertinent thereto. Pursuant to Rule 79(e), SCRPC, Petitioner requests hearing on that Rule 60, SCRPC, motion. There is no jurisdiction due to pending Rule 60, SCRPC, Motion and jurisdiction cannot be waived. Even assuming jurisdiction, resolution of the pending Rule 60, SCRPC, Motion as a prerequisite is reasonable. There are multiple factors justifying relief under Rule 60, SCRPC, including but not limited to, the fact that the excessive sanctions and an amount more than the Presiding Judge's yearly salary are cruel and unusual and/or consistent with prejudice, passion, or other unconstitutional cause. By way of comparison, the Volkswagen executive guilty of defrauding the E.P.A. and the United States in the diesel emissions scandal warranted \$200,000.00 which was not used to line the pockets of private parties who are untrustworthy *Pro Se* Legal Malpractice Defendants. The order of reference and subsequent orders should be dismissed/reversed. See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary

action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

XX. Motion to Dismiss is pending and the Disputed, Unverified Petition should be dismissed.

The Appellant respectfully submits the order of reference errs as a matter of law in failing to address the timely filed Motion to Dismiss due to Petitioner's lack of standing and failure to comply with statutory requirements, including but not limited to, the requirement for verified petition. 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). 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. Per the pending Motion to Dismiss, the unverified petition and subsequent orders should be dismissed/reversed.

XXI. Due to pending Rule 59(e), SCRCF, Motion, the orders on appeal should be reversed.

The Presiding Judge who signed the January 3, 2017, order of reference is the only Circuit Court Judge with jurisdiction to hear and rule on that pending Rule 59(e), SCRCF, Motion.

Rule 59, SCRCP. In violation of the South Carolina Rules of Court, statutory law, legislative intent, and case law, Defendants unprofessionally and unethically presented the same false petition on the same facts to a different Circuit Court Judge while the Rule 59(e), SCRCP, Motion was pending before the first Judge. In an attempt to avoid the Motion to Dismiss, Defendants decided to “Judge Shop” and illegally ex partied a different Judge with the same petition on the same facts, thereby illegally obtaining two different orders from two different judges. Two different orders by two different judges is unfair, discriminatory, prohibited, and improper. The law recognizes only the first order of January 3, 2017, and that order was pending Rule 59(e), SCRCP, Motion. See attached letter by the Clerk of Court documenting the rule of law and customary procedure: the Presiding Judge who signed the January 3, 2017, order is the only Circuit Court Judge with jurisdiction to hear and rule on the Rule 59(e), SCRCP, Motion regarding that order. Due to pending Rule 59, SCRCP, Motion and upon timely **service** of the Rule 59(e), SCRCP, motion, that order of reference is not final, not effective, and jurisdiction cannot be waived. In the case of *HomEq Servicing Corp. v. Napier et al*, *infra*, the appellate court stated:

We remand to the master for consideration of Napier's post-trial motion. See Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); Rule 5(e), SCRCP ("The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk."); Rule 59(g), SCRCP ("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."). *HomEq Servicing Corp. v. Napier et al*, Unpub. Op. No. 2012-UP-405 (S.C.Ct.App. dated July 11, 2012).

While not cited as precedent, that unpublished opinion cites the rule of law and the mandates for Rule 59(e), SCRCP, motions. “Judge Shopping” is prohibited. The order of reference and subsequent orders should be reversed. See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*,

108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

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

Defendants presented their unverified petition to one Circuit Court Judge. In an attempt to evade the pending Motion to Dismiss, *Pro Se* Defendants went "Judge Shopping," and through impermissible ex parte communication presented the same unverified petition to another Circuit Court Judge, while the first order was subject to a pending Rule 59(e), SCRCP, Motion. 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. *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.”). “It was in substance really, an appeal from the judgment of one judge to that of another.” *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). It is apparent that the order of *Judge Jefferson*, bearing a later date, is in conflict with the previous ruling of *Judge Young*, the presiding Judge, which order of *Judge Jefferson* will have to be reversed since one Circuit Judge has no power to review, revise or reverse the action of another Circuit Judge. *Steele v. Charlotte C. & A. R. Co.*, 14 S.C. 324 (S.C. 1880) (emphasis supplied); *Warren, Wallace & Co. v. Simon*, 16 S.C. 362; *Charles v. Jacobs*, 18 S.C. 598; *State v. Price*, 35 S.C. 273, 14 S.E. 490. The efficacy of the order of reference is challenged. Accordingly, the order of reference and subsequent orders should be reversed.

XXIII. Public policy prohibits two orders on the same petition by two different judges as unfair, improper, unconscionable, and denial of due process and equal protection.

The law recognizes only the first order of reference, and that order was pending Rule 59(e), SCRCF, motion. As such, there is no jurisdiction for any other Circuit Court Judge to entertain the

same petition. See attached letter from the Clerk of Court documenting the **rule of law** and customary procedure: the Presiding Judge who signed the first order is the only Circuit Court Judge with jurisdiction to hear and rule on the Rule 59(e), SCRCp, motion regarding that order. The rule of law abhors untrustworthy malpractice Defendants blatant attempts at Judge Shopping. Public policy prohibits two different orders on the same petition by two different judges as unfair, improper, unconscionable, and unconstitutional. Impossibility of compliance with two different orders on the same unverified petition by two different judges is a complete defense. The Appellant is prejudiced thereby. Defendants attempts to evade the pending Rule 59(e), SCRCp, and outstanding motion resulted in two conflicting orders by two different judges. It is unreasonable and unfair to litigants for Defendants to manipulate the circuit court to issue two conflicting orders, thereby orchestrating impossibility of compliance with two different orders. Accordingly, the order of reference and subsequent orders should be dismissed/reversed. See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

XXIV. The record reflects the Appellant appeared as requested for the RTSC (rule to show cause) hearing with the requested information, and Appellant requested hearing under oath which was denied.

The record reflects the Appellant appeared as requested for the RTSC (rule to show cause) hearing with the requested information, and Appellant requested hearing under oath. March 10, 2017, Transcript, p. 16, l. 9-15. Appellant was denied hearing under oath and denied request to call witnesses. S.C. Code Section 15-39-330. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on oath, except that when a corporation answers the answer shall be on the oath of an officer. Defendants failed to provide any officer or any evidence under oath. Accordingly, the orders are void/voidable. *See Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *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.

XXV. Defendants failed to provide timely notice of the motion for contempt.

Appellant appeared for the RTSC hearing on June 16, 2017. Appellant entered into the record the pending Notice of Appeal in the matter staying the lower court proceeding. Defendants' Motion was not timely served prior to the June 16, 2017, hearing, and Appellant did not waive notice. In fact, the Appellant did not receive notice in a timely fashion, and the Appellant is prejudiced thereby. The motion was served by mail, therefore, five days shall be added. Rule 6(e), SCRPC. Due to prejudicial denial of fair notice, opportunity to be heard, neutral decision-maker, and due process, the orders should be reversed. *See Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). *See Dedes, supra*. *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). *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, 9, 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.

XXVI. Defendants failed their burden of proof and presented no evidence.

At the hearing on June 16, 2017, Defendants failed their burden of proof and presented no evidence. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on oath, except that when a corporation answers, the answer

shall be on the oath of an officer. Defendants failed to provide any officer or any evidence under oath. Appellant did provide the financial information in a timely manner, and Defendants materially omitted this fact. See March 10, 2017, Transcript, p. 16, l. 9-15. In Defendants written motion and at the hearing, Defendants stated for the record that they were seeking two things: 1. contempt sanctions of \$2500.00, and 2. an order for subpoena to the holder of a mortgage. See Defendants Motion and June 16, 2017, Transcript. At the same time, Appellant was wrongfully denied the right to subpoena, to discovery, and to call witnesses. Objection is made to denial of the plaintiff's right to discovery and/or depositions as a denial of the right to a full and fair hearing. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). The plaintiff is prejudiced thereby including the right to establish violation of legal interest, equitable and other claims which should have and would have made a material difference in the outcome. Defendants failed their burden of proof. No oath, no corporate officer on oath, and no evidence was provided by Defendants to support the motion. The orders should be reversed. *Stone v. Reddix-Small*s, 295 S.C. 514, 369 S.E.2d 840 (1988); *Turner v. Rogers*, 564 U.S. 431 (2011).

XXVII. There has been no finding on ability to pay and Defendants confirmed receipt of Appellant's financial information on the record.

It is respectfully submitted that defendants are in possession of the requested financial information and tax returns which were submitted at the March 10, 2017, hearing on the record. See March 10, 2017, transcript on page 16, line 9-23. The record reflects the only income is from personal services which is expressly excepted by statute, S.C. Code Section 15-39-410. Defendants omitted material information at the hearing when they failed to disclose timely receipt of requested information. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on **oath**, except that when a corporation answers the answer shall be on the oath of

an officer. Defendants did not comply with S.C. Code Section 15-39-400. Defendants failed to provide any officer or any evidence under oath. Defendants have the requested information which was submitted in a timely fashion despite Defendants' misrepresentations. The transcripts and Defendants Motion show that Defendants were not requesting additional information because they had the information they requested from Appellant. Instead, Defendants were improperly seeking \$2500.00 in attorneys fees. Additional information is unnecessarily overbroad, cumulative, duplicative, irrelevant, burdensome, and/or contains or may contain privileged information. The transcript and motion show Defendants were asking for \$2500.00 from the Appellant, not additional information. No oath, no corporate officer on oath, no evidence, and no showing on ability to pay was provided by Defendants to support the motion. The Appellant respectfully requests reversal of the orders. *Stone v. Reddix-Small*s, 295 S.C. 514, 369 S.E.2d 840 (1988); *Turner v. Rogers*, 564 U.S. 431 (2011).

Appellant respectfully submits there has been no finding on ability to pay. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on **oath**, except that when a corporation answers the answer shall be on the oath of an officer. The March 10, 2017, transcript on page 16, line 9-23, reflects that Appellant appeared in order to provide the evidence and in fact, did provide the financial information and tax returns to the other side. Accordingly, the order entered June 23, 2017, should be reversed. See *Turner v. Rogers*, 564 U.S. 431 (2011). See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*,

523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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, 9, 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.

XXVIII. The June 23, 2017, order grants relief that was not requested and that is inconsistent with the hearing; malpractice Defendants, untrustworthy officers of the Court, failed and refused to timely copy the other side with the proposed order.

The record reflects that the order grants relief that was not requested in Defendants Motion or at the June 16, 2017, hearing, therefore, there was no notice thereof. See June 16, 2017, Transcript. Moreover, Malpractice Defendants, untrustworthy officers of the Court, failed and refused to timely copy the other side with the proposed order. The case of *Burgess v. Stern, infra*, is controlling. “South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them. *Id.* *Aiken County v. BSP Div. Of Envirotech Corp.*, 866 F.2d 661, (4th Cir.1989), evinces the Fourth Circuit Court of Appeals' disapproval of ex parte contacts of this type.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: ‘A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter.’ While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985). The Court in *Wisconsin Steel* noted:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition [311 S.C. 331] is not against "prejudicial" ex parte communications, but against ex parte communications. *In re: Wisconsin Steel*, 48 B.R. 753 (D.Ill.1985)."

Burgess v. Stern, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992).

As a matter of public policy, ex parte proposed orders by untrustworthy Malpractice Defendants are prohibited and undermine the integrity of the process, particularly where judges are elected and are subjected to re-elections. Former Justice Sandra Day O'Connor's warned the public about the dangers of electing judges. Former Justice Sandra Day O'Connor wrote "... many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." Judicial Independence and 21st Century Challenges, Sandra Day O'Connor, The Bench, July/August 2012. As she explained, "[t]he reason why judicial independence is so important is because there has to be a safe place where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out political influences." *Id* (emphasis supplied). Public policy, legislative intent, statutory authority, Federal case law, FRCP, State and federal constitutional law, and the South Carolina Rules of Court prohibit ex parte orders. This Court is respectfully requested to uphold the letter and spirit of the law. "There has to be a safe place." *Id*. The Appellant is prejudiced thereby, and the orders should be reversed. See *Turner v. Rogers*, 564 U.S. 431 (2011). See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g.,

Fuentes v. Shevin, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

XXIX. Pro Se Malpractice Defendants are not entitled to attorney's fees.

In even-handedness and fairness, Defendants are well aware and the record reflects that Defendants received timely notice that the appeal was pending, thereby vesting exclusive jurisdiction in the appellate court. The final disposition of the appeal occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time the case is pending on appeal. *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994); *McDowell v. SC DSS*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989); Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 393. Appellant timely notified Defendants of pending appeal and exclusive appellate jurisdiction. Accordingly, Defendants failed to mitigate and in equity and fairness are not entitled to attorneys fees. Moreover, the S.C. Code, including but not limited to, Sections 37-3-404 and 37-2-413 prohibit the attorneys fees, and there is no contract authorizing attorneys fees. Further, the wrongful fees are an illegal taking prohibited under the State and federal constitutions. Accordingly, the orders on appeal should be reversed. See *Turner v. Rogers*, 564 U.S. 431 (2011). See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347

(1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

XXX. Undivided interest in the marital home which houses child(ren) of the marriage who are in school is in the exclusive jurisdiction of the family court.

Undivided interest in the marital home which houses child(ren) of the marriage who are in school is in the exclusive jurisdiction of the family court. Pursuant to S.C. Code Section 15-39-60, an execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise. Accordingly, the orders should be reversed. See *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (S.C., 1996) ("The family court has exclusive jurisdiction to hear and determine actions for separate support and maintenance, legal separation, other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions related to the real and personal property of the marriage. S.C.Code Ann. § 20-7-420(2)."); *Turner v. Rogers*, 564 U.S. 431 (2011); *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).

XXXI. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment within the contemplation of S.C. Code Section 18-9-130. A novel question is raised of constitutionality of summary application by rule to show cause pursuant to amended S.C. Code Section 15-36-10 and/or incidental matter...

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied due to 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. 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). Appellant submits there was no counterclaim to be made by Defendants in the underlying Case Number 2007-CP-10-1444, and even if Defendants disputed that fact, any counterclaim was waived. The Physician is not the Defendant, and the matter herein is incidental. 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 officers of the court, and the Amended S.C. Code Section 15-36-10 with its reasonable attorney standard is not fair notice to the general public or to parties. Accordingly, the statute is null and void, and Defendants' summary application should be dismissed. The order of reference and all subsequent orders should be reversed. See *Turner v. Rogers*, 564 U.S. 431 (2011). See *Brooks v.*

CCCID and OID, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

XXXII. The Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied.

Due process requires notice, meaningful opportunity to be heard, and judicial review. These fundamental principles are matters of public importance. The constitutionality of the Amended S.C. Code Ann. Section 15-36-10 on its face and as applied herein is challenged, including but not limited to the following. This Court has ruled that the Amended S.C. Code Ann. Section 15-36-10 is inapplicable herein because the underlying claim occurred before the effective date of the Amended S.C. Code Ann. Section 15-36-10. *Southeastern Site Prep, L.L.C., v. Atlantic Coast Bldrs. and Contractors, L.L.C.*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011). In addition, Defendants motion for summary judgment was DENIED, thereby precluding a finding that the claim was frivolous and precluding sanctions under the applicable S.C. Code Ann. Section 15-36-10 through 50. The amended statute incorporates a reasonable attorney standard, which is not reasonable notice to the general public or to parties.

Further, the Amended S.C. Code Ann. Section 15-36-10 is constitutionally flawed including deprivation of right to full and fair hearing at trial by jury. Moreover, the reporting provision to the appellate court essentially operates as an ex parte communication which effectively thwarts/prevents meaningful, objective judicial review. Accordingly, the Amended S.C. Code Ann. Section 15-36-10 cannot pass constitutional muster and was unconstitutionally retroactively applied herein. See *Turner v. Rogers*, 564 U.S. 431 (2011). See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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.

XXXIII. When deciding a jurisdictional question based on facts, a reviewing court has the duty to review the entire record and find the jurisdictional facts within the entire record.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). It is respectfully submitted the orders on appeal should be

vacated/reversed.

XXXIV. Novel issues are raised regarding new legislation and new statutory law.

This case contains novel questions of law. *Osprey Inc., v. Cabana Limited Partnership*, 340 S.C. 367, 532 S.E.2d 269 (2000). It is respectfully submitted that novel issues regarding the inapplicable Amended S.C. Code Section 15-36-10 support reversal of the order of reference as well as all subsequent orders. See *Turner v. Rogers*, 564 U.S. 431 (2011). See *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). 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, 9, 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.

XXXV. A corporation is not allowed to appear Pro Se in contested matters.

A corporation is not allowed to appear Pro Se in contested matters. Corporations, which are artificial creatures of state law, do not have a right to appear pro se. See S.C. Code Ann. § 40-5-320 (1986). See *Days Inn Worldwide, Inc. v. JBS, Inc.*, No. 08-1771, 2010 WL 625391, *2 (D.S.C. Feb. 19, 2010) ("It is well-settled that a corporation may not represent itself."). See *Renaissance Enters., Inc. v.*

Summit Teleservices, Inc., 515 S.E.2d 257, 258 (S.C. 1999); *In re Easler*, 275 S.C. 400, 272 S.E.2d 32 (1980); *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576 (1995). Accordingly, Appellant requests dismissal of the lower court petition.

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, Appellant respectfully requests the orders on appeal be vacated/reversed and respectfully requests the Amended S.C. Code Section 15-36-10 be held unconstitutional on its face and/or as applied.

Respectfully submitted,



C. Holmes
PO Box 187
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803.883.3010
For Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-02403
Case No. 2007-CP-10-1444

RECEIVED
JAN 29 2018
SC Court of Appeals

C. Holmes,

Appellant,

v.

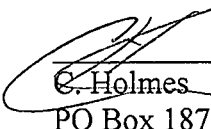
James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of
it in the United States Mail, postage prepaid, addressed to Respondents on this date at 1201 Main St.
#2200, Columbia, SC 29201.

Dated 1/26/18


C. Holmes
PO Box 187
Sullivans Island, SC 29482
803.883.3010
For Appellant

1 of 2

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

RECEIVED
JAN 29 2018
SC Court of Appeals

Re: Holmes v. Becker et al
App. Case No. 2017-02403

Dear Jenny:

Enclosed for filing is the original in the above case. Also, enclosed are the following:

- 1) Proof of Service and a copy, and
- 2) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

282

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

RECEIVED
JAN 29 2018
SC Court of Appeals

Re: Holmes v. Becker et al
App. Case No. 2017-02403

Dear Jenny:

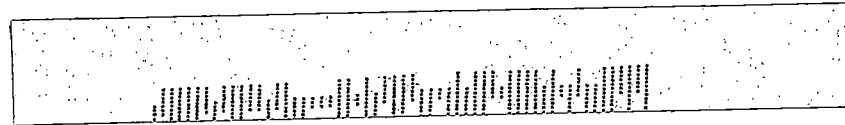
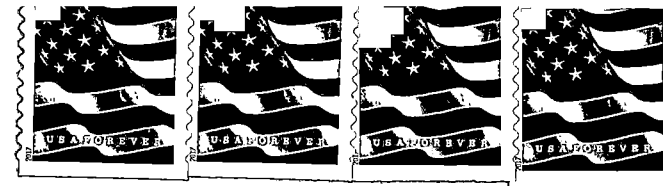
Enclosed for filing is the original in the above case. Also, enclosed are the following:

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Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

7 5224 4 42 2 021



29482-0187

Durst Family Medicine

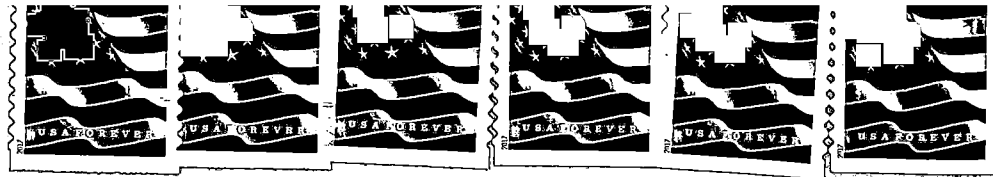
306 Station 22½

Sullivan's Island, South Carolina 29482-9788

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