

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2015-002297

**RECEIVED**  
MAR 08 2018  
SC Court of Appeals

John Doe, .....Appellant,

v.

Board of Zoning Appeals (BZA) and Town of Sullivan’s Island (S.I.),  
S.I. Zoning Administrator, and S.I. Building Dept., Individually and in  
Official Capacity, ..... Respondents.

---

**STATUS UPDATE BY RESPONDENTS**

---

**STATUS UPDATE**

On February 15, 2017, this Court issued an Order holding this appeal in abeyance and partially remanding the matter to circuit court for consideration of an outstanding motion. On February 26, 2018, the Court issued a letter requesting a status report. Respondents file this Status Update in response to that letter.

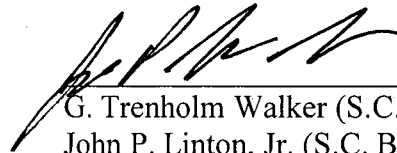
Since the last status update, Appellant has filed two new motions with the circuit court. On January 19, 2017 Appellant filed a Motion and Affidavit purporting to seek recusal/disqualification of the “Presiding Judge.” See Ex. A. On February 7, 2018, Appellant filed an Amended Motion and Amended Affidavit, again purporting to seek recusal/disqualification of the “Presiding Judge.” See Ex. B.

All outstanding motions in the case have been set for a hearing on April 2, 2018 with the Honorable R. Markley Dennis, Jr., Circuit Court Judge, presiding. See Ex. C.

Respondents are not aware of any other action in this case at this time.

Respectfully Submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



---

G. Trenholm Walker (S.C. Bar #5777)

John P. Linton, Jr. (S.C. Bar #79130)

P.O. Drawer 22167 (29413-2216)

Charleston, SC 29403

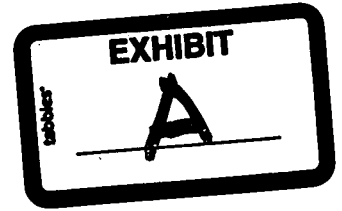
Phone: (843) 727-2200

Attorneys for Respondents

Email: [walker@wgflaw.com](mailto:walker@wgflaw.com)

[linton@wgflaw.com](mailto:linton@wgflaw.com)

March 6 2018  
Charleston, South Carolina



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
John Doe, ) CASE NO.: 15-CP-10-0775  
)  
)  
)  
)  
Plaintiff, ) NOTICE OF MOTION  
) AND  
-vs- ) MOTION  
)  
)  
)  
Board of Zoning Appeals (BZA) and )  
Town of Sullivans Island (S.I.), )  
S. I. Zoning Administrator, and )  
S. I. Building Dept., )  
Individually and In Official )  
Capacity. )  
)  
Defendants. )  
\_\_\_\_\_ )

FILED  
2018 JAN 19 PM 1:43  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: Defendants and Defendants' Counsel:

PLEASE TAKE NOTICE that the Plaintiff hereby moves before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, for issuance of order of recusal/disqualification in this matter. This motion to recuse/disqualify is governed by the South Carolina Rules of Court, statutory and case law, and State and federal constitutional law and is based upon the attached affidavit.

The Plaintiff respectfully requests recusal due to Plaintiff's reasonable belief given the circumstances that the Presiding Judge lacks impartiality mandated by the South Carolina Rules of Court, statutory and case law, and State and federal constitutional law. The question is not whether the Presiding Judge is impartial in fact, but rather whether reasonable men/women might question

impartiality under all circumstances. *United States v. Gigax*, 605 F.2d 507 (10th Cir. 1979). Under Canon 3(E)(1)(a), a judge should disqualify himself/herself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he/she has a personal bias or prejudice against a party. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998).

In the event the Presiding Judge does not recuse, Plaintiff is requesting an evidentiary hearing before a judge other than the subject of the motion, at which hearing he/she may adduce the overwhelming evidence showing prejudice. If the Presiding Judge does not recuse, the instant motion should be heard by a judge other than the subject of the motion. By analogy and from another state, the case of *Johnson v. District Court*, 674 P.2d 952 (Colo. 1984) is apposite. From that case, the court found that where a party signs a verified affidavit alleging conduct and statements on the part of a judge which, if true, show bias and prejudice or the appearance of bias or prejudice on the part of the judge, it is an abuse of discretion if that judge does not withdraw from the case, even though he or she believes the statements are false or that the meaning attributed to them by the party seeking recusal is erroneous. In such a case, the judge should not pass upon the truth or falsity of the facts alleged in the affidavit, but only upon the adequacy of the motion as a matter of law. From another case, the court ruled that: The fact that the Judge in his own mind does not believe that he is prejudiced does not prevent disqualification if the motions and affidavits reflect prejudice and/or appearance of impropriety. *Wright vs. District Court*, 16 Colorado Lawyer 541, March 1987. The fact that the judge in his or her own mind does not believe that he/she is prejudiced does not prevent disqualification if the motion and affidavit reflect prejudice. It is not sufficient for a party seeking disqualification to simply allege bias; the party must show by affidavit some evidence of bias or prejudice. *Mallett v. Mallett*, 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996). A judge's impartiality might reasonably be questioned when his or her factual findings are not supported by the record. *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856, 857 (1993).

Other courts have found that once facts have been set forth that create a reasonable inference of

a "bent of mind" that will prevent the judge from dealing fairly with the party seeking recusal, it is incumbent upon the judge to recuse himself. *See People v. Botham*, 629 P.2d 589, 595 (Colo. 1981); C.J.C. Canon 3(C)(1). A trial judge must accept the affidavits filed with the motion as true, even though the judge believes that the statements contained in the affidavits are false or that the meaning attributed to them by the party seeking recusal is erroneous. *Johnson v. District Court*, 674 P.2d 952 (Colo. 1982). C.R.C.P. 97 provides: "A judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. A judge may disqualify himself on his own motion for any of said reasons or any party may move for such disqualification and a motion by a party for disqualification shall be supported by law. 'The motion and supporting affidavit speak for themselves and the only question involved is whether the facts alleged are sufficient to compel the judge to disqualify himself.' *Kovacheff v Langhart*, 147 Colo. 339, 343-44, 363 P.2d 702, 705 (1961). The motion and affidavits are legally adequate if they 'state facts from which it may reasonably be inferred that the judge has bias or prejudice that will prevent him from dealing fairly' with the party seeking recusal. *People v. Botham*, 629 P.2d 589, 595 (Colo. 1981)."

Under South Carolina law, a judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the appeal therein. C.J.C. Canon 3. A judge may disqualify himself on his own motion for any of said reasons or any party may move for such disqualification. The motion and supporting affidavit speak for themselves and the only question involved is whether, under the facts alleged, reasonable men/women might question impartiality. *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114 (S.C. 2004). The motion and affidavit are legally adequate if they state facts from which it may reasonably be inferred that the judge has bias or prejudice that will prevent him or her from dealing fairly with the party seeking disqualification. *Roche*

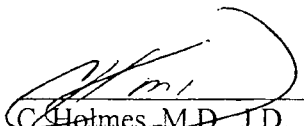
v. *Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998); *Berger v. United States*, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921).

Accordingly, a judge must grant a motion for disqualification and/or recusal if the motion and supporting affidavits state facts from which it reasonably may be inferred that the judge has a bias or prejudice that will prevent him from dealing fairly with the party seeking recusal. The judge must accept the affidavits filed with the motion as true even though the judge believes that the statements contained in the affidavits are false. It is respectfully submitted the motion and affidavit support recusal.

#### CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, the appellant respectfully makes this motion with abeyance request.

Respectfully submitted,

  
C. Holmes, M.D., J.D.  
PO Box 187  
Sullivans Island, SC 29482  
803.883.3010  
For Plaintiff

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

AFFIDAVIT

2015-CP-10-775

**FILED**

JAN 19 2018

JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.

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

1. I am the Plaintiff, over the age of eighteen (18) years, and competent to state the matters herein. This affidavit is based on personal knowledge and on information and belief and is submitted in support of the attached Motion for recusal/disqualification of the Presiding Judge in Case Number 2015-CP-10-0775.
2. The Presiding Judge herein is the same Presiding Judge in Case No. 2005-CP-10-5113 and Defendant's Counsel in that case is essentially the same firm or former firm of Defendant's Counsel herein. Moreover, on information and belief, the Presiding Judge was the college roommate of a top corporate executive at that Defendant Corporation during the time of Defendant Corporation's documented wrongdoing. The attached excerpt of transcript from Case No. 2005-CP-10-5113 reveals unconstitutional retroactive application of the amended S.C. Code Section 15-36-10 (hereinafter the Amended Act) in violation of the Legislature's intended and expressly stated effective date. *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 Amended Act is unconstitutional on its face and as applied including, but not limited to, the reasonable attorney standard which is not fair notice to the general public or to parties.
3. An objective observer should and would reasonably conclude that the record in Circuit Court Case Number 2005-CP-10-5113 reflects abundant material error of law and fact not founded upon the evidence. A reasonable man or woman should and would conclude that the record reflects the decision-maker was "influenced by partiality, prejudice, passion, caprice," or other unconstitutional reason not

founded on the facts. *See Peagler v. Atlantic Coast Line Railroad Company*, 234 S.C. 140, 107 S.E.

(2d) 15, 84 A.L.R. (2d) 794 (1963). The record including, but not limited to, that set forth more fully below, reflects the Presiding Judge's "partiality, prejudice, passion, caprice," or other unconstitutional basis and calls for recusal.

4. Further, the Presiding Judge failed to allow the court reporter to transcribe pertinent proceedings at summary judgment in that case, thereby preventing transcript and record for meaningful judicial review and depriving the parties of due process and full and fair appeal.

5. Moreover, the record reflects the Presiding Judge granted summary judgment against the Plaintiff's Counsel of Record in that case based on the improper, less burdensome Federal legal standard, thereby, voiding summary judgment. *See Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (S.C. 2009). That summary judgment order is reversible as a matter of law because it recites and relies on the improper legal standard: "the existence of a mere scintilla of evidence in support of the non-moving party's position is NOT sufficient to overcome a motion for summary judgment." Order filed May 23, 2007, in Case No. 2005-CP-10-5113 found at SUMMARY JUDGMENT STANDARD (emphasis supplied). This standard is not the proper standard because a mere scintilla of evidence IS sufficient to overcome a motion for summary judgment in South Carolina (when not based on Federal claims, etc.). *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (S.C. 2009). South Carolina jurists should and would know the South Carolina legal standard for summary judgment. See attached expert opinion affidavit refuting summary judgment.

6. Further, the Presiding Judge denied the Plaintiff's reasonable request for Counsel at the Amended

S.C. Code Section 15-36-10 hearing after Plaintiff's Counsel of Record had re-located out-of-state and was unable to attend.

7. Pursuant to controlling precedent and S.C. Code Section 15-36-10 through 15-36-50 in effect at that time, the represented party, the Plaintiff, is entitled to rely on Counsel of Record who signed the pleadings and complaint in that case which precludes a finding of frivolity against the Plaintiff. In manifest error, if not blatant bias, the Presiding Judge did not find Counsel of Record who signed the pleadings in violation of the Amended Act, S.C. Code Section 15-36-10. *Southeastern Site Prep, LLC, v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011).

8. The attached copy of transcript excerpt establishes that the Plaintiff timely raised the issue of inapplicability of the Amended Act. Despite knowing that novel issues and issues of new legislation were pending in that appeal, the Presiding Judge Dennis failed to follow the rule of law establishing stay pending appeal, thereby thwarting and/or denying meaningful appellate review including, but not limited to, the Amended Act's provision for reporting a purported violation of the inapplicable Amended Act to ODC. Rule 241, SCACR. Moreover, the money judgment exception to stay on appeal is inapplicable because the fees are incidental to the case and do not constitute a traditional money judgment in the underlying case. See *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal et al, *Appellate Practice in South Carolina*, 3<sup>rd</sup> edition (2016), p. 341. 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).

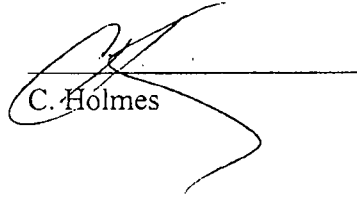
9. Despite the pending appeal with issues of public importance, the Presiding Judge prejudiced the appeal by violating controlling precedent and by violating the S.C. Rules of Court regarding stay pending appeal, through the Amended Act's provision for reporting a purported violation of the inapplicable Amended Act to the appellate court, again thwarting and/or denying objective and meaningful judicial review.

10. The attached copy of transcript excerpt also evidences impermissible ex parte communication and meddling by ODC (Office of Disciplinary Counsel) in that pending litigation, Case No. 2005-CP-10-5113. Significantly and materially, there was no grievance and no notice of any grievance with ODC or the Commission. While the Presiding Judge had no personal knowledge of that fact, ODC's wrongdoing and misrepresentations were designed to and did illegally sway the outcome in that pending case, Circuit Court Case Number 2005-CP-10-5113. ODC violated the letter and spirit of the Rules of Professional Conduct, Rule 407, SCACR, and engaged in impermissible and unprofessional conduct, thereby tipping the scales of justice. It is disturbing to consider what some attorneys would do to have ODC ex parte a presiding judge in their favor to the tune of almost \$100,000.00.

11. At the Amended S.C. Code Section 15-36-10 hearing, Defendants in that case, Circuit Court Case Number 2005-CP-10-5113, put forth no evidence to dispute that Plaintiff reasonably believed that the claims were valid or that the Plaintiff's reliance on advice of counsel was not made in good faith. *Sapphire Devt. v. Span USA Inc.*, 120 Fed. Appendix. 466, 2005 WL 226032 (C.A.4 (SC) 2005). Further, Defendants propounded no discovery and took no depositions, yet requested attorneys fees in an amount more than the Presiding Judge's salary for an entire year. Despite ruling that the attorneys fee affidavit contained unreasonable fees and charges, the Presiding Judge awarded almost \$100,000.00 in unreasonable attorneys fees. Defendants failed their burden of proof, and the record contains no facts or basis for the ruling.

12. Plaintiff is informed and believes that the Presiding Judge Dennis is not a neutral decision-maker in this and in other matters, is not impartial, and is unwilling or unable to make a fair and even-handed decision herein. The Plaintiff is prejudiced thereby and respectfully requests recusal. This motion is in no way a reflection on my esteemed law school classmate, Ned, on Nancy Jane, or on other members of the remarkable Dennis family.

FURTHER THE AFFIANT SAITH NOT.

  
C. Holmes

Subscribed and sworn to before me,

Notary Public, this 22 day

of December, 2017.

  
Katie Michelle Ritzgen

NOTARY PUBLIC

My commission expires: 9.13.21.

Cynthia Holmes, M.D. v East Cooper Community Hospital et al  
Case No. 05-CP-10-5113  
Hearing of September 18, 2009  
Before The Honorable R. Markley Dennis, Jr.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Cynthia Holmes, M.D.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 05-CP-10-5113
	)	
East Cooper Community Hospital,	)	
Inc., Tenet HealthSystems Medical,	)	
Inc., John Grady, M.D., and Paul	)	
Yantis,	)	
	)	
Defendants.	)	

### TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was heard on September 18, 2009, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

#### APPEARANCES:

Cynthia Collie, Esq.  
P O Box 187  
Sullivans Island, SC 29482-0187  
Appearing *Pro Se*

Lindsey Smith-Yancey, Esq.  
PRATT THOMAS EPTING & WALKER  
P O Drawer 22247

Cynthia Holmes, M.D. v East Cooper Community Hospital et al  
Case No. 05-CP-10-5113  
Hearing of September 18, 2009  
Before The Honorable R. Markley Dennis, Jr.

the record, preserved, and good luck in Columbia.  
Thank you.

MS. COLLIE: And your position is that  
the amended Act is applicable?

THE COURT: My position is that the  
Order is binding and final in this matter today.  
It will be -- you may serve your notice of appeal  
and you are aware -- and I'll place this on the  
record because we were advised of this at our  
meeting by Ms. Coggiola with the Office of  
Disciplinary Counsel, I am required to report  
this to her, which I will do today. I will send  
a letter and a copy -- and a certified copy of  
the Order. I also am required to, apparently,  
report it to the Supreme Court, which I will  
report it -- I will send a copy of that letter to  
Mr. Shearouse who is the clerk. So, thank you.

MS. COLLIE: Your Honor, this matter  
is pending appeal and I --)-

THE COURT: That's fine. That will  
be up to the Office of Disciplinary Counsel, but

*John C. Shershow, M.D.  
240 Central Park South  
Suite #2H  
New York, NY 10019  
(800) 388-9299  
Fax: (516) 706-0671  
JShershow@GMail.com*

*July 5, 2011*

STATE OF NEW YORK )  
COUNTY OF New York )

AFFIDAVIT

Personally came and appeared before me, Notary Public, John Shershow, M.D., who upon being duly sworn did depose and say the following:

- 1) I am over the age of eighteen (18) years and am competent to state the matters herein.
- 2) My Curriculum Vitae is attached and documents my experience in all aspects of hospital administration, staffing, and quality of care as well as *JOINT COMMISSION* accreditation, hospital care standards, medical staff affairs, physician credentialing and privileging, and medical quality assessment and review.

- 3) I have been certified as an expert in state courts on these matters.
- 4) In providing this affidavit, I affirm that, to the best of my knowledge, I am not related to any party to this action. I am informed and believe that I do not know any of the parties to this action.
- 5) My expert opinion follows and in rendering this opinion, I have relied on a large number of documents supplied to me by Dr. Holmes, consisting of the East Cooper Community Hospital (ECCH) Medical Staff Bylaws, as well as a large number of credentialing and privileging documents of Dr. Holmes, from approximately 1994 to 2009.
- 6) The *Joint Commission* is an organization which accredits hospitals based on national quality of care standards. My understanding is that at all times pertinent to the matter herein, ECCH is and has been accredited by the *Joint Commission*.
- 7) As part of those standards, the *Joint Commission* requires hospitals to have bylaws and, as part of those bylaws, to provide fair hearing rights to physicians. Those standards are national and local standards.
- 8) Based on review of Dr. Holmes' credentialing file, the reappointment applications, the ECCH Medical Staff Bylaws, and a letter from Janie Sinacore-Jaberg to Dr. Holmes on December 19, 2008, it is my expert opinion that Dr. Holme's 2008 application for re-appointment and change in medical staff status in was not properly responded to by ECCH.

Article VI, Section 5, of the ECCH Medical Staff Bylaws ("Change in

Membership, Privileges or Staff Category”); states:

*A staff member may, at any time, request a change of staff category (from consulting staff to associate or other staff category as in this case) by submitting a written notification to the Medical Staff Office. The Medical Staff Office will issue a letter requiring the physician to read and sign the letter stating the requirements of the provisional change in status. The request will be forwarded to the Department Chairman, then to the Credentials Committee. The Credentials Committee will recommend to the MEC the request, and the MEC will forward their recommendation to the Board of Directors for final approval. After final approval, the medical staff office will notify the physician of the final decision. The Medical Staff Office will track the provisional change for one (1) year and the Credentials Committee will evaluate the physician at that time to determine if he meets the necessary requirements set forth by the requested status change. (Emphasis supplied.)*

Article V, Section 3, of the ECCH Medical Staff Bylaws (“Reappointment Process”) lays out 12 requirements for reappointment to the medical staff. Notably in this section it is stated:

*[The application for reappointment will be delivered to the applicant and] must be completed and returned within 30 days to the Medical Staff Office for review. A late fee will be charged for the continued processing of the application past the 30 day deadline.*

Article IV, Section 3, of the ECCH Medical Staff Bylaws (“Associate”) lays out

the qualifications for the Associate status: *[the candidate must meet all the criteria for active staff membership] except the minimum required number of admissions, procedures, or patient contact per year or preceding 12-month period.*" (emphasis added)

9) Pursuant to the ECCH Medical Staff bylaw provisions quoted above, and on the attached *Joint Commission* flow sheet, it is my opinion that Dr. Holmes requests for change in staff category would and should have been granted. This is based upon (1) Dr. Holmes clearly submitted "a written notification to the Medical Staff Office," (see attached Medical Staff Reappointment Application); (1) Dr. Holmes provided information relevant to the requirements of licensure, training, education, and health status. In addition, Dr. Holmes received the highest ratings from peers for skill, competence, and quality of care; (3) Dr. Holmes maintains that she submitted the reappointment application within the required time frame; however even if she did not, the Bylaws impose only a "late fee," not a denial of privileges; (4) If Dr. Holmes application for change in status to Associate had been approved, the Bylaws are clear that she is exempt from "required number of admissions, procedures, or patient contact per year or preceding 12-month period."

10) Both the ECCH Medical Staff Bylaws, and *Joint Commission* Standards mandate a fair hearing process when adverse credentialing decisions are made by the medical staff and hospital Governing Board. Based upon my review of Dr. Holmes' credentialing files, and the ECCH Medical Staff Bylaws, it is my opinion that Dr. Holmes was denied fair hearing rights as explicitly required by these bylaws and by the *Joint Commission* standards.

Under Article VIII, Section 2B, of the ECCH Medical Staff Bylaws the grounds

for fair hearing are specified as follows:

*B. Grounds for Hearing:*

*Except as otherwise provided in these Bylaws, the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence, unless taken in compliance with a policy decision of the hospital (e.g., closing a department or service or physical plant changes), shall constitute grounds for a hearing pursuant to this Article:*

1. *denial of initial appointment to the medical staff;*
2. *denial of staff reappointment;*
3. *reduction or suspension of staff membership or clinical privileges for more than 30 days;*
4. *termination, revocation, or reduction of staff category;*
5. *denial or termination of clinical privileges;*
6. *summary suspension of clinical privileges for more than thirty (30) days;*
7. *significant consultation or co-admitting requirements other than in compliance with the Medical Staff Bylaws, Rules and Regulations or departmental rules and regulations;*
8. *denial of requested advancement in staff category;*
9. *denial of requested service affiliation.*

(emphasis added)

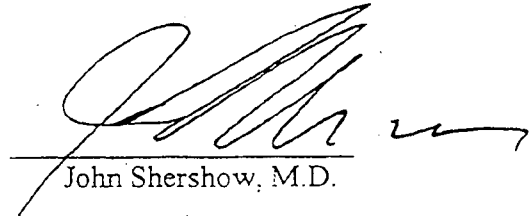
11) Privileges have value to a physician. A denial of privileges may lead to loss of income and/or adverse effects on professional standing and reputation.

12) In view of Dr. Holmes request for change in staff category not being processed properly and fairly by ECCH in terms of the applicable ECCH Medical Staff Bylaw provisions, Dr. Holmes was denied the opportunity for a change in status. Denial of access to the process under the plain language of the bylaws for requesting change in

staff category and denial of the right to participate in that process causes harm to any physician's practice, reputation, and ability to earn a livelihood.

13) Further, by denying Dr. Holmes fair hearing rights, per the applicable provisions of the ECCH Medical Staff Bylaw, ECCH prevented Dr. Holmes from her due process rights, mandated by both the Joint Commission, and the ECCG Medical Staff Bylaws.

FURTHER THE AFFIANT SAITH NOT.

  
John Shershow, M.D.

Subscribed and sworn to before me,

Notary Public, this 5 day

of July, 2011.

Helen Paulino  
NOTARY PUBLIC

My commission expires: April 18 2015

SEALED

**HELEN PAULINO**  
Notary Public - State of New York  
No. 01PA6239073  
Qualified in Queens County  
My Commission Expires April 18, 2015

Process for Privileging and Reprivileging

Does the organization have or plan to have the resources necessary to support the privilege?

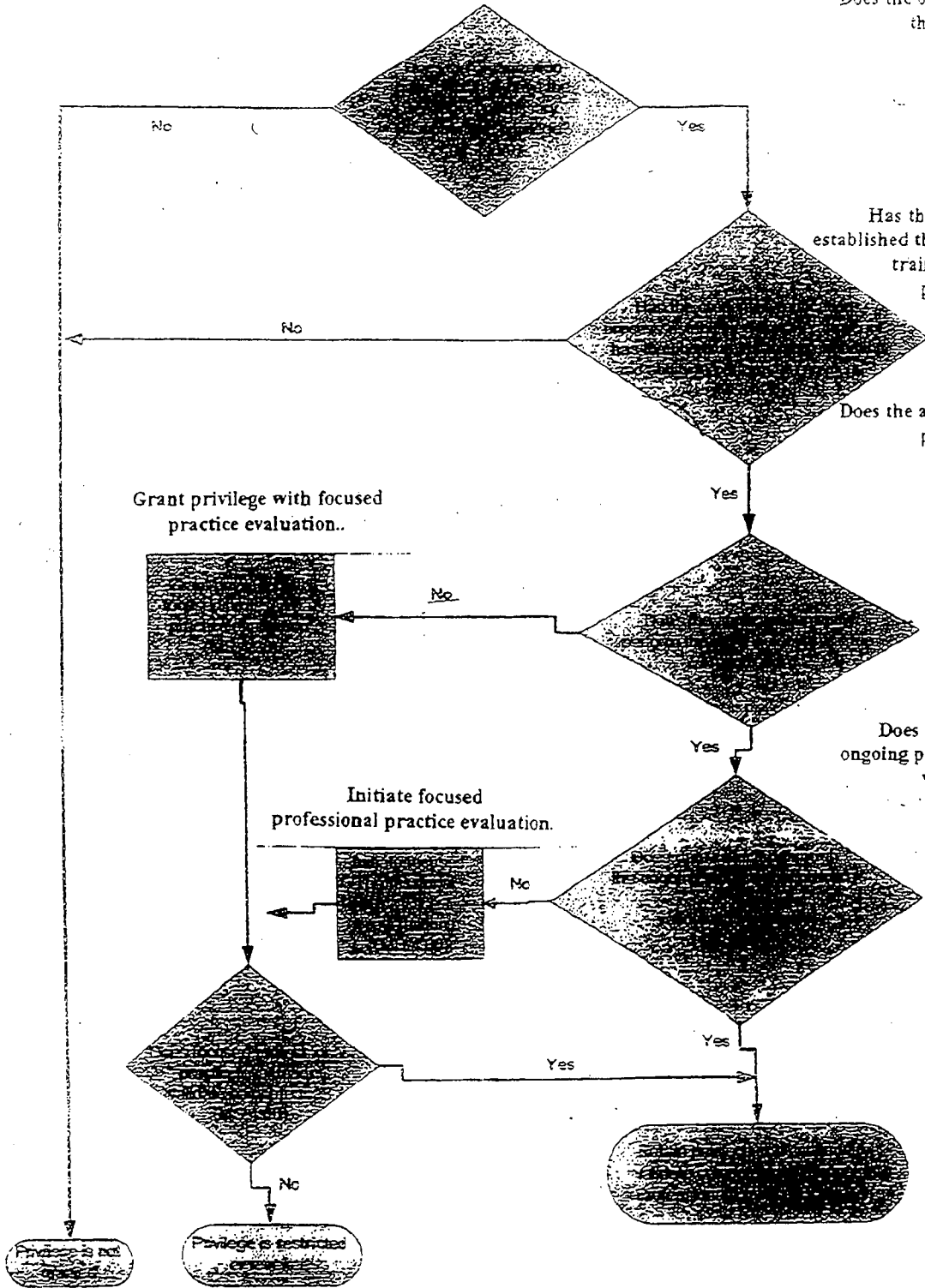
Has the credential verification process established that the applicant has the licensure, training, education, and ability to perform the privilege?

Does the applicant currently perform the privilege sought at the organization?

Does data collected through the ongoing professional practice evaluation validate competency?

Grant privilege with focused practice evaluation..

Initiate focused professional practice evaluation.



*John C. Shershow, M.D.*

*240 Central Park South #2H*

*New York, NY 10019*

*(800) 388-9299*

*Fax: (646) 514-7195*

*JShershow@gmail.com*

**CURRICULUM VITAE**

**JOHN C. SHERSHOW, M.D.**

**Professional Experience:**

- *JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS (JCAHO) (1989-2003)*  
Surveyor and Senior Teaching Faculty, for the preeminent hospital and ambulatory care accreditation organization in the United States
- *PERFORMANCE IMPROVEMENT COMPANY, INC (1996 – present)*  
Founder and President of this national hospital and healthcare consulting firm. Primary activities are consulting, lecturing, and providing educational courses to hospitals, ambulatory centers, and other healthcare organizations, on healthcare quality, peer review, performance measurement, medical staff credentialing, and preparation for JCAHO and other regulatory inspections. In addition, provides expert testimony on medical litigation.
- *PRIVATE PRACTICE, JOHN C. SHERSHOW, MD, PC (2010 – present)*  
Private medical practice in Manhattan, New York City
- *PRESIDENT, URGENT CARE OF WYOMING, INC (2003 – present)*  
Owner of an urgent care clinic in Wyoming
- *THE JOURNAL OF URGENT CARE MEDICINE (2006 – 2008)*  
On the editorial board of this medical journal
- *CHECKUPS, USA, INC (2006 – 2007)*

Chief Operating Officer and Medical Director of a company developing primary care clinics for retail environments.

- *URGENT CARE ASSOCIATION OF AMERICA* (2005-06)  
Director of Accreditation of the national urgent care organization
- *NORTHWEST COVENANT MEDICAL CENTER* (1995-1996)  
Medical Director of a major New Jersey hospital
- *DOWNSTATE MEDICAL CENTER* (1992-1995)  
Associate Dean and Associate Provost of New York State's largest medical school
- *KINGS COUNTY HOSPITAL CENTER* (1992-1995)  
Medical Director of one of the largest hospitals in the United States
- *JOHN C. SHERSHOW, M.D. AND ASSOCIATES, INC.* (1977-1989)  
Founder and President of one of the largest private medical groups in Massachusetts
- *ARBOUR HOSPITAL* (1978-1989)  
Attending staff at one of Boston's leading private hospitals; President of the Medical Staff 1985-1989.
- *HARVARD MEDICAL SCHOOL* (1970-2000)  
On the teaching faculty in numerous capacities
- *MASSACHUSETTS GENERAL HOSPITAL* (1970-2000)  
Served in various capacities, including Inpatient Director (1973-77) and on the teaching faculty (1970-2000) for this internationally known hospital
- *US ARMY RESEARCH INSTITUTE OF ENVIRONMENTAL MEDICINE* (1970-1973)  
A senior medical corps officer at one of the nation's largest military environmental research organizations

**Academic Appointments:**

- Clinical Instructor, *Harvard Medical School* (1970-2000)
- Assistant Professor, *Downstate Medical School* (1992-1995)

**Education:**

- Residency, *Yale University* (1969-1970)
- Residency, *University of Southern California* (1967-1969)
- Rotating Internship, *Los Angeles County Hospital* (1966-1967)
- M.D. *University of Southern California* (1966)
- B.A. (Magna cum Laude), *Harvard College* (1962)

**Certification and Licensure:**

- *National Board of Medical Examiners* (1967)
- Board Certified, *American Board of Psychiatry and Neurology* (1972)
- Past Licensure: California, Massachusetts, New Hampshire
- Current Licensure: New York, New Jersey

**Memberships:**

- Distinguished Fellow, *American Psychiatric Association*

**Publications:**

- 2 Books and numerous articles (detailed list available upon request)





Court, statutory and case law, and State and federal constitutional law. The question is not whether the Presiding Judge is impartial in fact, but rather whether reasonable men/women might question impartiality under all circumstances. *United States v. Gigax*, 605 F.2d 507 (10th Cir. 1979). Under Canon 3(E)(1)(a), a judge should disqualify himself/herself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he/she has a personal bias or prejudice against a party. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998).

In the event the Presiding Judge does not recuse, Plaintiff is requesting an evidentiary hearing before a judge other than the subject of the motion, at which hearing he/she may adduce the overwhelming evidence showing prejudice. If the Presiding Judge does not recuse, the instant motion should be heard by a judge other than the subject of the motion. By analogy and from another state, the case of *Johnson v. District Court*, 674 P.2d 952 (Colo. 1984) is apposite. From that case, the court found that where a party signs a verified affidavit alleging conduct and statements on the part of a judge which, if true, show bias and prejudice or the appearance of bias or prejudice on the part of the judge, it is an abuse of discretion if that judge does not withdraw from the case, even though he or she believes the statements are false or that the meaning attributed to them by the party seeking recusal is erroneous. In such a case, the judge should not pass upon the truth or falsity of the facts alleged in the affidavit, but only upon the adequacy of the motion as a matter of law. From another case, the court ruled that: The fact that the Judge in his own mind does not believe that he is prejudiced does not prevent disqualification if the motions and affidavits reflect prejudice and/or appearance of impropriety. *Wright vs. District Court*, 16 Colorado Lawyer 541, March 1987. The fact that the judge in his or her own mind does not believe that he/she is prejudiced does not prevent disqualification if the motion and affidavit reflect prejudice. It is not sufficient for a party seeking disqualification to simply allege bias; the party must show by affidavit some evidence of bias or prejudice. *Mallett v. Mallett*, 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996). A judge's impartiality might reasonably be questioned when his or her factual findings are not supported by the record. *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283,

285, 433 S.E.2d 856, 857 (1993).

Other courts have found that once facts have been set forth that create a reasonable inference of a "bent of mind" that will prevent the judge from dealing fairly with the party seeking recusal, it is incumbent upon the judge to recuse himself. *See People v. Botham*, 629 P.2d 589, 595 (Colo. 1981); C.J.C. Canon 3(C)(1). A trial judge must accept the affidavits filed with the motion as true, even though the judge believes that the statements contained in the affidavits are false or that the meaning attributed to them by the party seeking recusal is erroneous. *Johnson v. District Court*, 674 P.2d 952 (Colo. 1982). C.R.C.P. 97 provides: "A judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. A judge may disqualify himself on his own motion for any of said reasons or any party may move for such disqualification and a motion by a party for disqualification shall be supported by law. The motion and supporting affidavit speak for themselves and the only question involved is whether the facts alleged are sufficient to compel the judge to disqualify himself." *Kovacheff v Langhart*, 147 Colo. 339, 343-44, 363 P.2d 702, 705 (1961). The motion and affidavits are legally adequate if they 'state facts from which it may reasonably be inferred that the judge has bias or prejudice that will prevent him from dealing fairly' with the party seeking recusal. *People v. Botham*, 629 P.2d 589, 595 (Colo. 1981)."

Under South Carolina law, a judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the appeal therein. C.J.C. Canon 3. A judge may disqualify himself on his own motion for any of said reasons or any party may move for such disqualification. The motion and supporting affidavit speak for themselves and the only question involved is whether, under the facts alleged, reasonable men/women might question impartiality. *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114 (S.C. 2004). The motion and affidavit are

legally adequate if they state facts from which it may reasonably be inferred that the judge has bias or prejudice that will prevent him or her from dealing fairly with the party seeking disqualification. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998); *Berger v. United States*, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921).

The case of *Burgess v. Stern*, *infra*, controls and provides that all orders rendered after ex parte contacts should be vacated:

“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, (4<sup>th</sup> 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 contacts 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, the South Carolina Rules of Court, and fundamental fairness prohibit ex parte contacts and require recusal under the circumstances. See *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009). "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. See *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

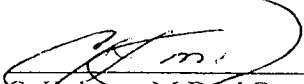
Accordingly, a judge must grant a motion for disqualification and/or recusal if the motion and

supporting affidavits state facts from which it reasonably may be inferred that the judge has a bias or prejudice that will prevent him from dealing fairly with the party seeking recusal. The judge must accept the affidavits filed with the motion as true even though the judge believes that the statements contained in the affidavits are false. It is respectfully submitted the motion and affidavit support recusal.

### CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, the appellant respectfully makes this motion with abeyance request.

Respectfully submitted,

  
C. Holmes, M.D., J.D.  
PO Box 187  
Sullivan's Island, SC 29482  
803.883.3010  
For Plaintiff

15-CP-10-775

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

AMENDED AFFIDAVIT

FILED  
2018 FEB -7 AM 10:07  
JULIE M. HIGHTOWER  
CLERK OF COURT

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

1. I am the Plaintiff, over the age of eighteen (18) years, and competent to state the matters herein. This affidavit is based on personal knowledge and on information and belief and is submitted in support of the attached Motion for recusal of the Presiding Judge in Case Number 2015-CP-10-0775.

2. The Presiding Judge herein is the same Presiding Judge in Case No. 2005-CP-10-5113 and Defendant's Counsel in that case is essentially the same firm or former firm of Defendant's Counsel herein. Moreover, on information and belief, the Presiding Judge was the college roommate of a top corporate executive at that Defendant Corporation during the time of Defendant Corporation's documented wrongdoing. The attached excerpt of transcript from Case No. 2005-CP-10-5113 reveals unconstitutional retroactive application of the amended S.C. Code Section 15-36-10 (hereinafter the Amended Act) in violation of the Legislature's intended and expressly stated effective date.

*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 Amended Act is unconstitutional on its face and as applied including, but not limited to, the reasonable attorney standard which is not fair notice to the general public or to parties.

3. An objective observer should and would reasonably conclude that the record in Circuit Court Case Number 2005-CP-10-5113 reflects abundant material error of law and fact not founded upon the evidence. A reasonable man or woman should and would conclude that the record reflects the decision-maker was "influenced by partiality, prejudice, passion, caprice," or other unconstitutional reason not founded on the facts. See *Peagler v. Atlantic Coast Line Railroad Company*, 234 S.C. 140, 107 S.E. (2d) 15, 84 A.L.R. (2d) 794 (1963). The record including, but not limited to, that set forth more fully

below, reflects the Presiding Judge's "partiality, prejudice, passion, caprice," or other unconstitutional basis and calls for recusal.

4. Further, the Presiding Judge failed to allow the court reporter to transcribe pertinent proceedings at summary judgment in that case, thereby preventing transcript and record for meaningful judicial review and depriving the parties of due process and full and fair appeal.

5. Moreover, the record reflects the Presiding Judge granted summary judgment against the Plaintiff's Counsel of Record in that case based on the improper, less burdensome Federal legal standard, thereby, voiding summary judgment. *See Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (S.C. 2009). That summary judgment order is reversible as a matter of law because it recites and relies on the improper legal standard: "the existence of a mere scintilla of evidence in support of the non-moving party's position is NOT sufficient to overcome a motion for summary judgment." Order filed May 23, 2007, in Case No. 2005-CP-10-5113 found at SUMMARY JUDGMENT STANDARD (emphasis supplied). This standard is not the proper standard because a mere scintilla of evidence IS sufficient to overcome a motion for summary judgment in South Carolina (when not based on Federal claims, etc.). *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (S.C. 2009). South Carolina jurists should and would know the South Carolina legal standard for summary judgment. See attached expert opinion affidavit refuting summary judgment.

6. Further, the Presiding Judge denied the Plaintiff's reasonable request for Counsel at the Amended S.C. Code Section 15-36-10 hearing after Plaintiff's Counsel of Record had re-located out-of-state and was unable to attend.

7. Pursuant to controlling precedent and S.C. Code Section 15-36-10 through 15-36-50 in effect at that time, the represented party, the Plaintiff, is entitled to rely on Counsel of Record who signed the

pleadings and complaint in that case which precludes a finding of frivolity against the Plaintiff. In manifest error, if not blatant bias, the Presiding Judge did not find Counsel of Record who signed the pleadings in violation of the Amended Act, S.C. Code Section 15-36-10. *Southeastern Site Prep, LLC v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011).

8. The attached copy of transcript excerpt establishes that the Plaintiff timely raised the issue of inapplicability of the Amended Act. Despite knowing that novel issues and issues of new legislation were pending in that appeal, the Presiding Judge Dennis failed to follow the rule of law establishing stay pending appeal, thereby thwarting and/or denying meaningful appellate review including, but not limited to, the Amended Act's provision for reporting a purported violation of the inapplicable Amended Act to ODC. Rule 241, SCACR. Moreover, the money judgment exception to stay on appeal is inapplicable because the fees are incidental to the case and do not constitute a traditional money judgment in the underlying case. See *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal et al, *Appellate Practice in South Carolina*, 3<sup>rd</sup> edition (2016), p. 341. 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).

9. Despite the pending appeal with issues of public importance, the Presiding Judge prejudiced the appeal by violating controlling precedent and by violating the S.C. Rules of Court regarding stay pending appeal, through the Amended Act's provision for reporting a purported violation of the inapplicable Amended Act to the appellate court, again thwarting and/or denying objective and meaningful judicial review.

10. The attached copy of transcript excerpt also evidences impermissible ex parte communication and meddling by ODC (Office of Disciplinary Counsel) in that pending litigation, Case No. 2005-CP-10-5113. Significantly and materially, there was no grievance and no notice of any grievance with ODC or the Commission. While the Presiding Judge had no personal knowledge of that fact, ODC's

wrongdoing and misrepresentations were designed to and did illegally sway the outcome in that pending case, Circuit Court Case Number 2005-CP-10-5113. ODC violated the letter and spirit of the Rules of Professional Conduct, Rule 407, SCACR, and engaged in impermissible and unprofessional conduct, thereby tipping the scales of justice. It is disturbing to consider what some attorneys would do to have ODC ex parte a presiding judge in their favor to the tune of almost \$100,000.00.


11. At the Amended S.C. Code Section 15-36-10 hearing, Defendants in that case, Circuit Court Case Number 2005-CP-10-5113, put forth no evidence to dispute that Plaintiff reasonably believed that the claims were valid or that the Plaintiff's reliance on advice of counsel was not made in good faith.

*Sapphire Devt. v. Span USA Inc.*, 120 Fed. Appendix. 466, 2005 WL 226032 (C.A.4 (SC) 2005).

Further, on information and belief, Defendants took no depositions, yet requested attorneys fees in an amount more than the Presiding Judge's salary for an entire year. Despite ruling that the attorneys fee affidavit contained unreasonable fees and charges, the Presiding Judge awarded almost \$100,000.00 in unreasonable attorneys fees. Defendants failed their burden of proof, and the record contains no facts or basis for the ruling. A discerning review finds Defendants motion under the Amended FPA does not even allege a violation of the Amended Act, much less prove it. Moreover, that unconstitutional retroactive application of the Amended Act was exploited by the same untrustworthy Defendants firm, or former firm, herein. But for that unconstitutional retroactive application of the Amended Act, that same firm would not be able to pile on another violation of the Amended Act and fraudulently claim, unreasonable attorneys fees to copy and paste duplicate prior pleadings, propound no discovery, and conduct no depositions on a case that was dismissed for lack of subject matter jurisdiction purportedly at over \$50,000.00.

12. Plaintiff is informed and believes that the Presiding Judge Dennis is not a neutral decision-maker in this and in other matters, is not impartial, and is unwilling or unable to make a fair and even-handed decision herein. The Plaintiff is prejudiced thereby and respectfully requests recusal. This motion is in no way a reflection on my esteemed law school classmate, Ned, on Nancy Jane, or on other members of the remarkable Dennis family.

FURTHER THE AFFIANT SAITH NOT.

  
C. Holmes

Subscribed and sworn to before me,

Notary Public, this 23<sup>rd</sup> day

of January, 2018.

Susan R McLeod  
NOTARY PUBLIC

My commission expires: 03/01/27

Cynthia Holmes, M.D. v East Cooper Community Hospital et al  
Case No. 05-CP-10-5113  
Hearing of September 18, 2009  
Before The Honorable R. Markley Dennis, Jr.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Cynthia Holmes, M.D.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 05-CP-10-5113
	)	
East Cooper Community Hospital,	)	
Inc., Tenet HealthSystems Medical,	)	
Inc., John Grady, M.D., and Paul	)	
Yantis,	)	
	)	
Defendants.	)	

### TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was heard on September 18, 2009, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

#### APPEARANCES:

Cynthia Collie, Esq.  
P O Box 187  
Sullivans Island, SC 29482-0187  
Appearing *Pro Se*

Lindsey Smith-Yancey, Esq.  
PRATT THOMAS EPTING & WALKER  
P O Drawer 22247

Cynthia Holmes, M.D. v East Cooper Community Hospital et al  
Case No. 05-CP-10-5113  
Hearing of September 18, 2009  
Before The Honorable R. Markley Dennis, Jr.

the record, preserved, and good luck in Columbia.  
Thank you.

MS. COLLIE: And your position is that  
the amended Act is applicable?

THE COURT: My position is that the  
Order is binding and final in this matter today.  
It will be -- you may serve your notice of appeal  
and you are aware -- and I'll place this on the  
record because we were advised of this at our  
meeting by Ms. Coggiola with the Office of  
Disciplinary Counsel, I am required to report  
this to her, which I will do today. I will send  
a letter and a copy -- and a certified copy of  
the Order. I also am required to, apparently,  
report it to the Supreme Court, which I will  
report it -- I will send a copy of that letter to  
Mr. Shearouse who is the clerk. So, thank you.

MS. COLLIE: Your Honor, this matter  
is pending appeal and I ---

THE COURT: That's fine. That will  
be up to the Office of Disciplinary Counsel, but

John C. Shershow, M.D.  
240 Central Park South  
Suite #2H  
New York, NY 10019  
(800) 388-9299  
Fax: (516) 706-0671  
JShershow@GMail.com

July 5, 2011

STATE OF NEW YORK )  
COUNTY OF New York )

AFFIDAVIT

Personally came and appeared before me, Notary Public, John Shershow, M.D., who upon being duly sworn did depose and say the following:

- 1) I am over the age of eighteen (18) years and am competent to state the matters herein.
- 2) My Curriculum Vitae is attached and documents my experience in all aspects of hospital administration, staffing, and quality of care as well as *JOINT COMMISSION* accreditation, hospital care standards, medical staff affairs, physician credentialing and privileging, and medical quality assessment and review.

3) I have been certified as an expert in state courts on these matters.

4) In providing this affidavit, I affirm that, to the best of my knowledge, I am not related to any party to this action. I am informed and believe that I do not know any of the parties to this action.

5) My expert opinion follows and in rendering this opinion, I have relied on a large number of documents supplied to me by Dr. Holmes, consisting of the East Cooper Community Hospital (ECCH) Medical Staff Bylaws, as well as a large number of credentialing and privileging documents of Dr. Holmes, from approximately 1994 to 2009.

6) The *Joint Commission* is an organization which accredits hospitals based on national quality of care standards. My understanding is that at all times pertinent to the matter herein, ECCH is and has been accredited by the *Joint Commission*.

7) As part of those standards, the *Joint Commission* requires hospitals to have bylaws and, as part of those bylaws, to provide fair hearing rights to physicians. Those standards are national and local standards.

8) Based on review of Dr. Holmes' credentialing file, the reappointment applications, the ECCH Medical Staff Bylaws, and a letter from Janie Sinacore-Jaberg to Dr. Holmes on December 19, 2008, it is my expert opinion that Dr. Holmes' 2008 application for re-appointment and change in medical staff status in was not properly responded to by ECCH.

Article VI, Section 5, of the ECCH Medical Staff Bylaws ("Change in

Membership, Privileges or Staff Category”), states:

*A staff member may, at any time, request a change of staff category (from consulting staff to associate or other staff category as in this case) by submitting a written notification to the Medical Staff Office. The Medical Staff Office will issue a letter requiring the physician to read and sign the letter stating the requirements of the provisional change in status. The request will be forwarded to the Department Chairman, then to the Credentials Committee. The Credentials Committee will recommend to the MEC the request, and the MEC will forward their recommendation to the Board of Directors for final approval. After final approval, the medical staff office will notify the physician of the final decision. The Medical Staff Office will track the provisional change for one (1) year and the Credentials Committee will evaluate the physician at that time to determine if he meets the necessary requirements set forth by the requested status change. (Emphasis supplied.)*

Article V, Section 3, of the ECCH Medical Staff Bylaws (“Reappointment Process”) lays out 12 requirements for reappointment to the medical staff. Notably in this section it is stated:

*[The application for reappointment will be delivered to the applicant and] must be completed and returned within 30 days to the Medical Staff Office for review. A late fee will be charged for the continued processing of the application past the 30 day deadline.*

Article IV, Section 3, of the ECCH Medical Staff Bylaws (“Associate”) lays out

the qualifications for the Associate status: *[the candidate must meet all the criteria for active staff membership] except the minimum required number of admissions, procedures, or patient contact per year or preceding 12-month period.*" (emphasis added)

9) Pursuant to the ECCH Medical Staff bylaw provisions quoted above, and on the attached *Joint Commission* flow sheet, it is my opinion that Dr. Holmes requests for change in staff category would and should have been granted. This is based upon (1) Dr. Holmes clearly submitted "a written notification to the Medical Staff Office," (see attached Medical Staff Reappointment Application); (1) Dr. Holmes provided information relevant to the requirements of licensure, training, education, and health status. In addition, Dr. Holmes received the highest ratings from peers for skill, competence, and quality of care; (3) Dr. Holmes maintains that she submitted the reappointment application within the required time frame; however even if she did not, the Bylaws impose only a "late fee," not a denial of privileges; (4) If Dr. Holmes application for change in status to Associate had been approved, the Bylaws are clear that she is exempt from "required number of admissions, procedures, or patient contact per year or preceding 12-month period."

10) Both the ECCH Medical Staff Bylaws, and *Joint Commission* Standards mandate a fair hearing process when adverse credentialing decisions are made by the medical staff and hospital Governing Board. Based upon my review of Dr. Holmes' credentialing files, and the ECCH Medical Staff Bylaws, it is my opinion that Dr. Holmes was denied fair hearing rights as explicitly required by these bylaws and by the *Joint Commission* standards.

Under Article VIII, Section 2B, of the ECCH Medical Staff Bylaws the grounds

for fair hearing are specified as follows:

*B. Grounds for Hearing:*

*Except as otherwise provided in these Bylaws, the taking or recommending of any one or more of the following actions when based on the member's professional conduct or competence, unless taken in compliance with a policy decision of the hospital (e.g., closing a department or service or physical plant changes), shall constitute grounds for a hearing pursuant to this Article:*

- 1. denial of initial appointment to the medical staff;*
- 2. denial of staff reappointment;*
- 3. reduction or suspension of staff membership or clinical privileges for more than 30 days;*
- 4. termination, revocation, or reduction of staff category;*
- 5. denial or termination of clinical privileges;*
- 6. summary suspension of clinical privileges for more than thirty (30) days;*
- 7. significant consultation or co-admitting requirements other than in compliance with the Medical Staff Bylaws, Rules and Regulations or departmental rules and regulations;*
- 8. denial of requested advancement in staff category;*
- 9. denial of requested service affiliation.*

(emphasis added)

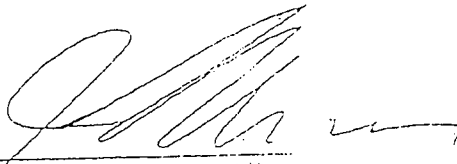
11) Privileges have value to a physician. A denial of privileges may lead to loss of income and/or adverse effects on professional standing and reputation.

12) In view of Dr. Holmes request for change in staff category not being processed properly and fairly by ECCH in terms of the applicable ECCH Medical Staff Bylaw provisions, Dr. Holmes was denied the opportunity for a change in status. Denial of access to the process under the plain language of the bylaws for requesting change in

staff category and denial of the right to participate in that process causes harm to any physician's practice, reputation, and ability to earn a livelihood.

13) Further, by denying Dr. Holmes fair hearing rights, per the applicable provisions of the ECCH Medical Staff Bylaw, ECCH prevented Dr. Holmes from her due process rights, mandated by both the Joint Commission, and the ECCG Medical Staff Bylaws.

FURTHER THE AFFIANT SAITH NOT.

  
\_\_\_\_\_  
John Shershow, M.D.

Subscribed and sworn to before me,

Notary Public, this 5 day

of July, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC

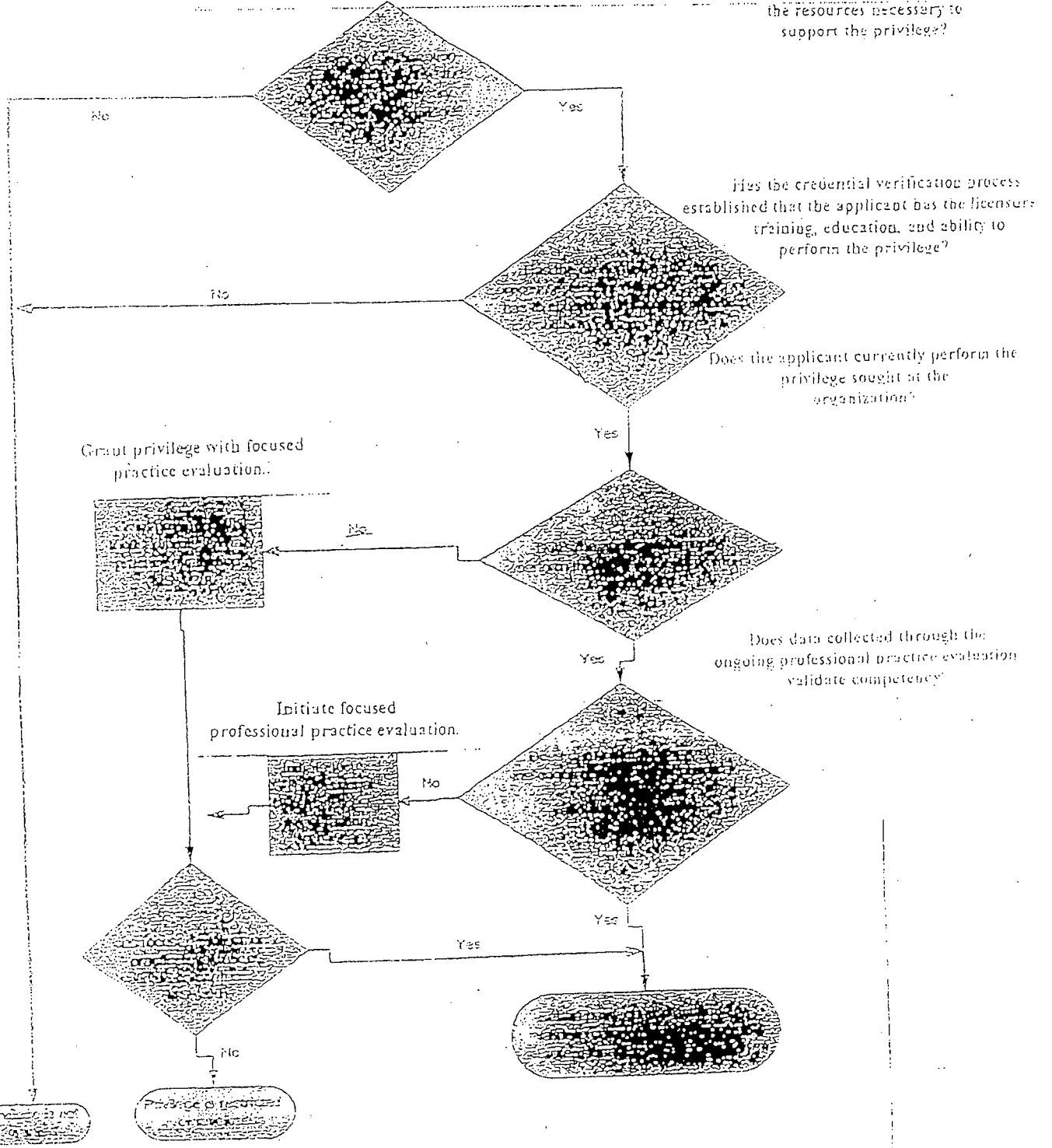
My commission expires: April 18, 2015

SEALED

HELEN PAULINO  
Notary Public - State of New York  
No. 01PA6239073  
Qualified In Queens County  
My Commission Expires April 18, 2015

Process for Privileging and Reprivileging

Does the organization have or plan to have the resources necessary to support the privilege?



*John C. Shershow, M.D.*

*240 Central Park South #2H*

*New York, NY 10019*

*(800) 388-9299*

*Fax: (646) 514-7195*

*JShershow@gmail.com*

CURRICULUM VITAE

JOHN C. SHERSHOW, M.D.

Professional Experience:

- *JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS (JCAHO) (1989-2003)*  
Surveyor and Senior Teaching Faculty, for the preeminent hospital and ambulatory care accreditation organization in the United States
- *PERFORMANCE IMPROVEMENT COMPANY, INC (1996 - present)*  
Founder and President of this national hospital and healthcare consulting firm. Primary activities are consulting, lecturing, and providing educational courses to hospitals, ambulatory centers, and other healthcare organizations, on healthcare quality, peer review, performance measurement, medical staff credentialing, and preparation for JCAHO and other regulatory inspections. In addition, provides expert testimony on medical litigation.
- *PRIVATE PRACTICE, JOHN C. SHERSHOW, MD, PC (2010 - present)*  
Private medical practice in Manhattan, New York City
- *PRESIDENT, URGENT CARE OF WYOMING, INC (2003 - present)*  
Owner of an urgent care clinic in Wyoming
- *THE JOURNAL OF URGENT CARE MEDICINE (2006 - 2008)*  
On the editorial board of this medical journal
- *CHECKUPS, USA, INC (2006 - 2007)*

Chief Operating Officer and Medical Director of a company developing primary care clinics for retail environments.

- *URGENT CARE ASSOCIATION OF AMERICA (2005-06)*  
Director of Accreditation of the national urgent care organization
- *NORTHWEST COVENANT MEDICAL CENTER (1995-1996)*  
Medical Director of a major New Jersey hospital
- *DOWNSTATE MEDICAL CENTER (1992-1995)*  
Associate Dean and Associate Provost of New York State's largest medical school
- *KINGS COUNTY HOSPITAL CENTER (1992-1995)*  
Medical Director of one of the largest hospitals in the United States
- *JOHN C. SHERSHOW, M.D. AND ASSOCIATES, INC. (1977-1989)*  
Founder and President of one of the largest private medical groups in Massachusetts
- *ARBOUR HOSPITAL (1978-1989)*  
Attending staff at one of Boston's leading private hospitals; President of the Medical Staff 1985-1989.
- *HARVARD MEDICAL SCHOOL (1970-2000)*  
On the teaching faculty in numerous capacities
- *MASSACHUSETTS GENERAL HOSPITAL (1970-2000)*  
Served in various capacities, including Inpatient Director (1973-77) and on the teaching faculty (1970-2000) for this internationally known hospital
- *US ARMY RESEARCH INSTITUTE OF ENVIRONMENTAL MEDICINE (1970-1973)*  
A senior medical corps officer at one of the nation's largest military environmental research organizations

Academic Appointments:

- Clinical Instructor, *Harvard Medical School (1970-2000)*
- Assistant Professor, *Downstate Medical School (1992-1995)*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS  
Dr. Cynthia Holmes, M.D.

JUDGMENT IN A CIVIL CASE

Case No. 2005-CP-10-5113

versus  
East Cooper Community  
Hospital, Inc.; Tenet  
HealthSystem Medical, Inc.;  
John Grady, M.D.; Paul Yantis,  
MD

Plaintiff

Defendant

**CHECK ONE:**

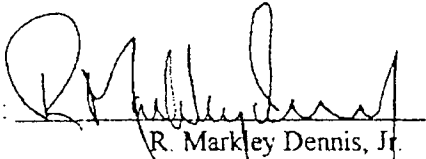
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. nonsuit)  
 Rule 43(k), SCRPC (Settled);  Other - \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding Arbitration,  
Subject to right to restore to confirm, vacate or modify arbitration award,  Other \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by Court

**This matter initially came before the Court on April 23, 2007. Pursuant to a phone conference on May 3, 2007, Defendants' motion for summary judgment is GRANTED! Formal order to follow. And it is so ORDERED!**

Dated at Charleston, South Carolina,

Date: May 3, 2007

Judge:   
R. Markley Dennis, Jr.

This judgment was entered on the \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_, and a copy mailed first class this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, to attorneys of record or to parties (when appearing pro-se) as follows:

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

BY \_\_\_\_\_  
JULIA J. STRONG  
CLERK OF COURT

2007 MAY 1  
PH 2:33

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO.: 15-CP-10-0775

John Doe,

Plaintiff,

-vs-

Board of Zoning Appeals (BZA) and  
Town of Sullivans Island (S.I.),  
S. I. Zoning Administrator, and  
S. I. Building Dept.,  
Individually and In Official  
Capacity.


Defendants.

CERTIFICATE  
OF  
SERVICE

FILED  
2017 FEB - 7 AM 10:01  
CLERK OF COURT

I certify that I have served a copy of the foregoing on the Defendants by depositing a copy in the United States Mail, postage prepaid, addressed to counsel of record on this date at 66 Hasell St., Chas., SC 29401. A copy has been forwarded to the Presiding Judge as well. All parties required to be served have been served.

Dated January 30, 2017

  
C. Holmes  
POB 187  
SI, SC 29482-0187  
843.883.3010



State of South Carolina  
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.  
Judge

Charleston County Judicial Center  
100 Broad Street, Suite 439  
Charleston, SC 29401  
Phone: (843) 958-5062  
MDennisLC@sccourts.org

February 22, 2018

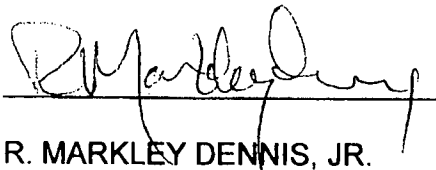
Dr. Cynthia Holmes  
PO Box  
North Charleston, SC 29420

Re: John Doe v. Board of Zoning Appeals, et al (Case no: 2015-CP-10-0775)

Dr. Holmes,

I have received the attached contents of a motion that needed to be filed. Notwithstanding it being sent to me, I filed it with the Clerk of Court. I am also sending this by copy to all other parties. Due to the difficulty of contacting you and the inability to set a date, I am scheduling the hearing for all outstanding motions in this case for April 2, 2018 at 1:30pm in the Charleston County Judicial Center. If you fail to appear, the hearing will go forward in your absence. Please contact my office if you have any questions.

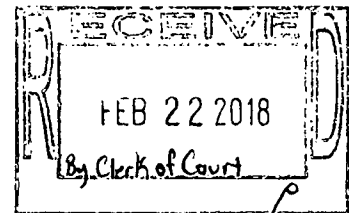
Very truly yours,



R. MARKLEY DENNIS, JR.

RMD/srj

CC: John Linton, attorney for the Defendants (via email)



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHAS )  
 )  
 \_\_\_\_\_ )  
 ) Doz )  
 ) Plaintiff, )  
 vs. )  
 )  
 \_\_\_\_\_ )  
 ) BZA et al )  
 ) Defendant. )

IN THE COURT OF COMMON PLEAS  
9th JUDICIAL CIRCUIT  
 CASE NO.: 15-CP-10-775

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: _____ Bar No. _____ Address: <u>P.O. Box 187, SE, SC 29482-0187</u> Phone: <u>883.3010</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>NAKID</u> Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____														
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)															
<b>SECTION I: Hearing Information</b>															
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO															
<b>SECTION II: Motion/Order Type</b>															
<input checked="" type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order <u>Form</u> I hereby move for relief or action by the court as set forth in the attached <del>proposed order</del> <u>MOTION</u> . Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant _____ Date submitted <u>12/30, 2017</u>															
<b>SECTION III: Motion Fee</b>															
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25</u> <input type="checkbox"/> EXEMPT: (check reason) <table style="width:100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> <td></td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party														
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Post-Conviction Relief														
<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Stay in Bankruptcy														
<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)														
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions															
Name of Court Reporter: _____															
<input type="checkbox"/> Other: _____															
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20__														
<b>CLERK'S VERIFICATION</b>															
Collected by: _____ Date Filed: _____, 20__															
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____															

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) NINTH JUDICIAL CIRCUIT  
) CASE NO.: 15-CP-10-0775

John Doe,

)

)

)

)

Plaintiff,

) NOTICE OF MOTION

)

AND

-vs-

)

MOTION

)

)

)

Board of Zoning Appeals (BZA) and

)

Town of Sullivans Island (S.I.),

)

S. I. Zoning Administrator, and

)

S. I. Building Dept.,

)

Individually and In Official

)

Capacity.

)

)

Defendants.

)

)

FILED  
2018 JAN 19 PM 1:13  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: Defendants and Defendants' Counsel:

PLEASE TAKE NOTICE that the Plaintiff hereby moves before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, for issuance of order of recusal/disqualification in this matter. This motion to recuse/disqualify is governed by the South Carolina Rules of Court, statutory and case law, and State and federal constitutional law and is based upon the attached affidavit.

The Plaintiff respectfully requests recusal due to Plaintiff's reasonable belief given the circumstances that the Presiding Judge lacks impartiality mandated by the South Carolina Rules of Court, statutory and case law, and State and federal constitutional law. The question is not whether the Presiding Judge is impartial in fact, but rather whether reasonable men/women might question

impartiality under all circumstances. *United States v. Gigax*, 605 F.2d 507 (10th Cir. 1979). Under Canon 3(E)(1)(a), a judge should disqualify himself/herself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he/she has a personal bias or prejudice against a party. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998).

In the event the Presiding Judge does not recuse, Plaintiff is requesting an evidentiary hearing before a judge other than the subject of the motion, at which hearing he/she may adduce the overwhelming evidence showing prejudice. If the Presiding Judge does not recuse, the instant motion should be heard by a judge other than the subject of the motion. By analogy and from another state, the case of *Johnson v. District Court*, 674 P.2d 952 (Colo. 1984) is apposite. From that case, the court found that where a party signs a verified affidavit alleging conduct and statements on the part of a judge which, if true, show bias and prejudice or the appearance of bias or prejudice on the part of the judge, it is an abuse of discretion if that judge does not withdraw from the case, even though he or she believes the statements are false or that the meaning attributed to them by the party seeking recusal is erroneous. In such a case, the judge should not pass upon the truth or falsity of the facts alleged in the affidavit, but only upon the adequacy of the motion as a matter of law. From another case, the court ruled that: The fact that the Judge in his own mind does not believe that he is prejudiced does not prevent disqualification if the motions and affidavits reflect prejudice and/or appearance of impropriety. *Wright vs. District Court*, 16 Colorado Lawyer 541, March 1987. The fact that the judge in his or her own mind does not believe that he/she is prejudiced does not prevent disqualification if the motion and affidavit reflect prejudice. It is not sufficient for a party seeking disqualification to simply allege bias; the party must show by affidavit some evidence of bias or prejudice. *Mallett v. Mallett*, 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996). A judge's impartiality might reasonably be questioned when his or her factual findings are not supported by the record. *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856, 857 (1993).

Other courts have found that once facts have been set forth that create a reasonable inference of

a "bent of mind" that will prevent the judge from dealing fairly with the party seeking recusal, it is incumbent upon the judge to recuse himself. *See People v. Botham*, 629 P.2d 589, 595 (Colo. 1981); C.J.C. Canon 3(C)(1). A trial judge must accept the affidavits filed with the motion as true, even though the judge believes that the statements contained in the affidavits are false or that the meaning attributed to them by the party seeking recusal is erroneous. *Johnson v. District Court*, 674 P.2d 952 (Colo. 1982). C.R.C.P. 97 provides: "A judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. A judge may disqualify himself on his own motion for any of said reasons or any party may move for such disqualification and a motion by a party for disqualification shall be supported by law. 'The motion and supporting affidavit speak for themselves and the only question involved is whether the facts alleged are sufficient to compel the judge to disqualify himself.' *Kovacheff v Langhart*, 147 Colo. 339, 343-44, 363 P.2d 702, 705 (1961). The motion and affidavits are legally adequate if they 'state facts from which it may reasonably be inferred that the judge has bias or prejudice that will prevent him from dealing fairly' with the party seeking recusal. *People v. Botham*, 629 P.2d 589, 595 (Colo. 1981)."

Under South Carolina law, a judge shall be disqualified in an action in which he is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the appeal therein. C.J.C. Canon 3. A judge may disqualify himself on his own motion for any of said reasons or any party may move for such disqualification. The motion and supporting affidavit speak for themselves and the only question involved is whether, under the facts alleged, reasonable men/women might question impartiality. *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114 (S.C. 2004). The motion and affidavit are legally adequate if they state facts from which it may reasonably be inferred that the judge has bias or prejudice that will prevent him or her from dealing fairly with the party seeking disqualification. *Roche*

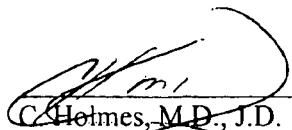
*v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998); *Berger v. United States*, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921).

Accordingly, a judge must grant a motion for disqualification and/or recusal if the motion and supporting affidavits state facts from which it reasonably may be inferred that the judge has a bias or prejudice that will prevent him from dealing fairly with the party seeking recusal. The judge must accept the affidavits filed with the motion as true even though the judge believes that the statements contained in the affidavits are false. It is respectfully submitted the motion and affidavit support recusal.

#### CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, the appellant respectfully makes this motion with abeyance request.

Respectfully submitted,

  
C. Holmes, M.D., J.D.  
PO Box 187  
Sullivans Island, SC 29482  
803.883.3010  
For Plaintiff

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MAR 08 2018  
SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-002297

John Doe, .....Appellant,

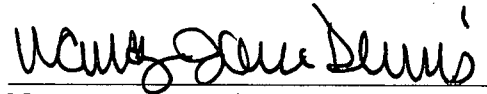
v.

Board of Zoning Appeals (BZA) and Town of Sullivan’s Island (S.I.), S.I.  
Zoning Administrator, and S.I. Building Dept., Individually and in  
Official Capacity, ..... Respondents.

**PROOF OF SERVICE**

I certify that I served Respondents’ Status Update via United States Mail, First  
Class, prepaid, to the Appellant at the address below on March 6, 2018:

John Doe  
C. Holmes  
P.O. Box 187  
Sullivan’s Island, SC 29482-0187



Nancy Jane Dennis  
Paralegal

March 6, 2018

U.S.MAIL [X] EMAIL []

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RECEIVED**  
MAR 08 2018  
SC Court of Appeals

Re: John Doe, Appellant, v. Board of Zoning Appeals (BZA) and Town of Sullivan's Island (S.I.), S.I. Zoning Administrator, and S.I. Building Dept., Individually and in Official Capacity, Respondents  
Appellate Case No. 2015-002297

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Respondents' Status Update with Proof of Service.

Thank you for your courtesies in filing this with the Court.

Sincerely,

WALKER GRESSETTE FREEMAN & LINTON, LLC

  
John P. Linton, Jr.

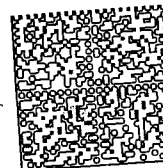
Enclosure

c: John Doe (w/encl.)  
C. Holmes  
P.O. Box 187  
2061 Middle Street  
Sullivan's Island, SC 29482

The Honorable R. Markley Dennis, Jr.  
Caroline Leonard

**WALKER  
GRESSETTE  
FREEMAN  
LINTON LLC**

66 Hasell Street, Charleston, SC 29401  
PO Box 22167, Charleston, SC 29413



UNITED STATES POSTAGE



PITNEY BOWES

\$ 008.50<sup>00</sup>

02 1P

0000847775

MAR 06 2018

MAILED FROM ZIP CODE 29401

**RECEIVED**  
MAR 08 2018  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211