



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) 719-4434  
Fax: (843) 719-4599  
[MDennisJ@sccourts.org](mailto:MDennisJ@sccourts.org)

March 8, 2018

Jenny Abbott Kitchings  
PO Box 11629  
Columbia, SC29211

**RECEIVED**

MAR 12 2018

SC Court of Appeals

Re: John Doe v. Board of Zoning Appeals  
Appellate Case No. 2015-002297

Dear Ms. Kitchings,

In order to keep you apprised of this matter, I have enclosed a copy of the letter sent to the parties notifying them that all outstanding motions for Doe v. BZA (2015-CP10-0775) will be heard on April 2, 2018 at 1:30pm. Please contact me if there is anything else we can assist you with.

Very truly yours,

A handwritten signature in cursive script that reads "Seth R. Johnson".

Seth R. Johnson  
Law Clerk to the Honorable R. Markley Dennis, Jr.

cc: John Linton, attorney for the Defendants  
Cynthia Holmes, Plaintiff



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

**RECEIVED**

MAR 12 2018

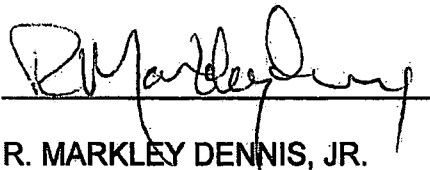
SC Court of Appeals

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 )

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

Doc )  
Plaintiff, )  
vs. )  
BZA et al )  
Defendant. )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff's Attorney: Bar No. _____ Address: <u>PO BOX 187, SE, SC 29482-0187</u> Phone: <u>883-3010</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>NAKUP</u> Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached
- Form Motion/Order Form

I hereby move for relief or action by the court as set forth in the attached ~~proposed order~~ MOTION.

Signature of Attorney for  Plaintiff /  Defendant \_\_\_\_\_ Date submitted 12/30, 2017

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$ 25
- EXEMPT: (check reason)
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - 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: \_\_\_\_\_
- Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_  
JUDGE CODE \_\_\_\_\_  
Date: \_\_\_\_\_, 20\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_, 20\_\_

- MOTION FEE COLLECTED: \$ \_\_\_\_\_
- CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

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

) NOTICE OF MOTION  
) AND  
) MOTION

**RECEIVED**

MAR 12 2013

SC Court of Appeals

FILED  
2013 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*

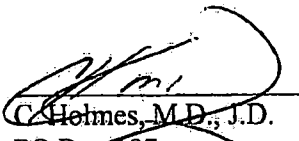
*v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998); *Berger v. United States*, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921).

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

Judge R. Markley Dennis  
Charleston Judicial Center  
100 Broad St., Suite 439  
Charleston, SC 29401

D/S Auth 14 Columbia

Presort  
First Class Mail  
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Jenny A. Kitchings  
PO Box 11629  
Columbia, SC 29211

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MAR 12 2018  
SC Court Appeals

BAHNSBB 29211

