THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-002403
Case No. 2007-CP-10-1444

Cynthia Holmes (C. Holmes),

Appellant,

v.

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

Respondents.

Petition for Rehearing

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For Appellant

Appellant respectfully enters Petition for Rehearing with abeyance request pursuant to Rule 240(i) and 240(j), SCACR, which requires panel review of dismissal of appeal by an individual especially where the Initial Brief has already been filed. For substantial justice, dismissal of appeal by an individual deserves Rule 240(i), SCACR, panel review. Moreover, it is unclear why the pending timely Expedited Motion has not been addressed regarding prohibition against Pro Se Respondent corporation appearing Pro Se in the appellate courts. The record reflects and the cover letter for counsel of record for Pro Se Respondent corporation clearly identifies counsel as employee of Defendant corporation and, therefore, Pro Se. Turning a blind eye to and selective failure to abide by controlling precedent prohibiting corporations from appearing Pro Se is unseemly at best and ill-advised with a Pro Se Defendant Corporation accused of Legal Malpractice raising the appearance of impropriety. Failure to timely rule on the Expedited Motion implicating lack of jurisdiction and/or lack of standing raises the appearance of impropriety. Respondents motion to dismiss the appeal is untimely, was filed after the Initial Brief was filed, is based on frank misrepresentation of Rule 203, SCACR, and is a blatant attempt by Pro Se Defendants to evade the merits of the appeal raised in the timely filed Initial Brief. Dismissal of appeal by an individual while Expedited Motion is pending and after the Initial Brief has been filed deserves panel review. Pertinent facts for the timely appeal are as follows. The order on appeal filed September 29, 2017, was wrongfully entered in the circuit court at a time when the matter was pending appeal with exclusive appellate jurisdiction. Rule 205, SCACR. See attached copy of Notice of Appeal (NOA) timely served on February 11, 2017, and pending on September 29, 2017. Pro Se respondents knew or should have known to request permission from the appellate court to file in the lower court. Moreover, pursuant to the attached copy of Pro Se defendants motion, Pro Se defendants admit they have no interest or ownership rights herein and, therefore, lack standing. Rule 59(e), SCRCP, Motion was timely served, filed, and forwarded to the presiding judge and is currently

pending. Accordingly, the order on appeal is void/voidable for lack of standing and based on exclusive appellate jurisdiction and dismissal of appeal must be reversed.

STANDARD OF REVIEW

Questions of law are reviewed de novo. S.C. Const. art. V, § 5. The March 29, 2018, order dismissing the appeal was issued by an individual judge. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 S.C.; Rule 240(j), SCACR. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for panel review of decisions by a single judge for preservation of the integrity of the process and for the Court's self-preservation as well as other reasons, particularly in South Carolina where judges are subjected to elections and re-elections. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the order dismissing this appeal stands before the appellate court as if it had never been decided and the March 29, 2018, Order dismissing this appeal is reviewed de novo. See *Griffin v. State,* 763 N.E.2d 450 (Ind.2002) (citing 5 Arch N. Bobbitt & Frederic C. Sipe, *Bobbitt's Revision, Works' Indiana Practice* § 111.3 (5th ed.1979)). See *Ex parte Northern Pacific Railway Co.*, 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233; *Stratton v. St. Louis Southwestern Railway Co.*, 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (The District Judge recognized the rule that if the court was warranted in taking jurisdiction and the case fell within section 266 of the Judicial Code (28 USCA § 380), a single judge was not authorized to dismiss the complaint on the merits, whatever his opinion of the merits might be). "The prior denial of the transfer motion was the order of a single judge. Federal Rule of Appellate Procedure 27(c) provides that 'an action of a single judge may be reviewed by the court.' That order is thus not binding on us as law of

the case." *Thompson v. Merit Sys. Protection Bd.*, 772 F.2d 879, 882 (Fed. Cir. 1985). Significantly and materially, the necessary element for Rule 240(j), SCACR, panel review is that the order is signed by a single judge; Rule 240(j), SCACR, review is an appeal to a panel which does not include the individual judge who issued the March 29, 2018, order and which does not include retirees. A discerning review establishes a different legal standard of review, i.e., de novo, reflecting a different purpose for Rule 240(j), SCACR, petition or motion for rehearing as opposed to Rule 221, SCACR, petition for rehearing. The legislature enacted S.C. Code § 14-8-220 and Rule 240(j), SCACR, for good cause. Accordingly, the appellant respectfully submits petition for rehearing pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR.

Rule 240(j), SCACR, expressly provides for panel appeal and review of order signed by a single judge. The statutory authority underlying Rule 240(j), SCACR, is found in S.C. Code § 14-8-220. That statute is set forth as follows:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; **appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

HISTORY: 1979 Act No. 164 Part IV-A Section 1, eff July 1, 1979; 1979 Act No. 194 Part III Section 5, apparently effective Aug. 8, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff July 1, 1985.

That statute underlies Rule 240(j), SCACR, which was renumbered in 2009 from Rule 224(j), SCACR. The previous Rule 224(j), SCACR, included the provision that, "Any party aggrieved by an order of an individual judge or justice may seek review of that order by the appellate court or a panel thereof." That provision was preserved (in 2007) but reworded then re-numbered Rule 240(j), SCACR, to provide

that, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Significantly and materially, the legislative intent and underlying statutory authority remain the same in S.C. Code § 14-8-220. The legal standard of review for Rule 240(j), SCACR, appeal is de novo, different than the standard of review for Rule 221, SCACR, rehearing.

The appellant respectfully appeals pursuant to S.C. Code § 14-8-220 for de novo review by a panel of judges which does not include the individual judge who issued the order. S.C. Code § 14-8-220 provides statutory authority for Rule 240(j), SCACR, and provides for **appeal** of the order of a single judge to a panel of judges. S.C. Code § 14-8-220. Meaningful review on appeal requires that a judge not participate in appeal of his or her own order. Occasionally, a recently appointed Appellate Court Judge or recent Supreme Court Justice will find him or herself in the position of potentially reviewing an Order that he or she authored while in the court below. In these cases, the Judge or Justice will recuse him or herself from reviewing his or her own order. A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Rule 3(E)(1), CJC, Rule 501, SCACR*. Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978). In the *Rice* case, then Chief Judge Haynsworth further ruled that, "For many years a federal judge has been prohibited from sitting to hear or determine an appeal in a case or issue tried by him. 28 U.S.C.A. § 47. To say the least, it would be unbecoming for a judge to sit in a United States Court of Appeals to participate in the determination of the correctness, propriety and appropriateness of what he did in the trial of the case. After rendering decisions, some judges remain open minded, and some are unreluctant to confess previous error, but a reasonable person has a reasonable basis to question the impartiality of a judge who sits in a United States Court of Appeals to review his own decision as a trial judge." *Id.* at 1117. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial. *Id.* at 1116. Granted, this is a Fourth Circuit case, but the principle from

this oft-cited case is well stated, sound, and universally accepted as logical and fair. "There is another way to look at the case, however: as one in which the losing litigant appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper--indeed is an express ground for recusal, see 28 U.S.C. Sec. 47--**in modern American law** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in *Rice* that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978).] We agree with this result." *Russell v. Lane*, .890 F.2d 947 (7th Cir. 1989) (emphasis supplied). The appellant respectfully requests Rule 240(j), SCACR, appeal with de novo review by a panel of judges, which does not include the individual judge who issued the order or retirees.

In addition, new case law in *Brooks* is controlling. *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). State and federal constitutional and statutory law mandate the right to represent oneself and appellant asserts violation of those rights, denial of substantial due process, and extreme prejudice thereby. Pro Se respondents have admitted they have no interest herein and Pro Se respondents' motion to dismiss the appeal must be vacated for lack of standing. See attached. Pursuant to the appellate courts' inherent authority, the lower court orders must be vacated for lack of standing as well.

Moreover, appellate courts are "obligated to inquire in every action whether a justiciable controversy (*including standing*) exists in a matter." *Kiawah Prop. Owners Grp. v. The Public Service Comm'n. of S.C.*, 357 S.C. 232, 593 S.E.2d 148 (2004) (emphasis supplied); Toal *et al., Appellate Practice in South Carolina* (3d ed. 2016), p. 125. The appellate courts possess the inherent authority to consider questions of justiciability (*including standing*). *See James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010) (emphasis supplied). Attached for ease of reference is a copy of the motion Pro Se defendants filed with the circuit court wherein Pro Se defendants admit they have no interest and,

therefore, have no standing. The attached copy of correspondence from the Court of Appeals dated February 24, 2017, memorializes the Pro Se Respondents representations: Pro Se defendants, who now admit lack of standing, are the only parties. Even assuming the Pro Se defendant corporation were a party, which appellant disputes, a corporation is not allowed to appear Pro Se in the appellate or circuit courts. Pursuant to the appellate courts' inherent authority, dismissal of the appeal must be vacated/reversed and the lower court orders must be vacated for lack of standing as well.

ARGUMENT

I. Lack Of Standing.

Pro Se Defendants filed motion in the circuit court in this Case # 2007-CP-10-01444. See attached copy. By that motion, Pro Se Respondents have now admitted they have no ownership rights or interests herein and, therefore, lack standing. *Georgetown Cty. League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 713 S.E.2d 287 (S.C. 2011). Further, enclosed please find a copy of this Honorable Court's correspondence. That correspondence memorializes Pro Se Respondents representations to this Honorable Court that the only Respondents involved are James Y. Becker and Manton Grier, who now admit lack of standing, and there has been no substitution. Accordingly, Pro Se Defendants have admitted lack of standing in the lower court, and the lower court orders must be vacated/reversed.

II. Lack of jurisdiction may be raised at any time.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. The instant matter is a direct appeal. Standing is a prerequisite to jurisdiction and without standing, there is no jurisdiction for the lower court orders which must be dismissed. Lack of jurisdiction may be raised at any time. *Dove v. Goldkist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994). Lack of jurisdiction may not be waived. *Amisub of S.C., Inc., v. Passmore*, 316 S.C. 112, 447 S.E.2d 207 (1994).

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

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

IV. The money judgment exception to automatic stay does not apply because the matter herein does not constitute a "money judgment" in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental or collateral to the underlying claim.

The money judgment exception to automatic stay does not apply because the matter herein does not constitute a "money judgment" in the underlying claim within the contemplation of S.C. Code

Section 18-9-130; rather the matter is incidental to the underlying claim. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p. 341. In the instant case, the underlying claims ended with directed verdict for the defendants. Significantly and materially, there was no counterclaim. 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). Accordingly, the matter herein is not a traditional money judgment and, therefore, it is subject to automatic stay under Rule 241(a), SCACR. Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p. 340. As a result, the lower court proceeding is stayed and the order entered September 29, 2017, pending appeal violates exclusive appellate jurisdiction. In the alternative, any dispute regarding the application of automatic stay is resolved in the appellate court. *See Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and the order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

V. A corporation is not allowed to appear Pro Se in appellate courts.

Moreover, a corporation is not allowed to appear Pro Se in appellate courts. Black's Law Dictionary defines Pro Se as: "For Himself; in his own behalf." Black's Law Dictionary, 5th Edition. Corporations, which are artificial creatures of state law, do not have a right to appear pro se. See S.C. Code Ann. § 40-5-320 (1986). *See Days Inn Worldwide, Inc. v. JBS, Inc.*, No. 08-1771, 2010 WL 625391, *2 (D.S.C. Feb. 19, 2010) ("It is well-settled that a corporation may not represent itself."). *See Renaissance Enters., Inc. v. Summit Teleservices, Inc., 515 S.E.2d 257, 258 (S.C. 1999); In re Easler*

275 S.C. 400, 272 S.E.2d 32 (1980); *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576 (1995). "In *State v. Wells*, 191 S.C. 468, 5 S.E.2d 181 (1939), this Court held that a corporation must act through licensed attorneys in legal matters. That holding was modified in *In re Unauthorized Practice of Law, 309 S.C. 304, 422 S.E.2d 123 (1992),* in which the Court held a non-lawyer, officer, agent, or employee may represent a business entity pursuant to S.C.Code Ann. § 40-5-80 (1986) in civil magistrate's court proceedings. The Court stated further that the magistrate shall require a written authorization from the entity's president, chairperson, general partner, owner or chief executive officer." *Brown v. Coe*, 365 S.C. 137, 616 S.E.2d 705 (SC 2005). Respondent's cover letter reflects it was filed by employees of the corporation and, therefore, Pro Se. In addition, there is no written authorization from corporate executive. In *Renaissance Enters., Inc. v. Summit Teleservices, Inc., supra,* the Court held that a corporation may appear Pro Se only in magistrate's court. As such, Respondents filing is a nullity. *Brown v. Coe, supra.* Accordingly, the lower court orders must be vacated/reversed.

VI. Pro Se Respondents materially omit that the Notice of Appeal (NOA) is timely served, and the Clerk's Office has determined the Notice of Appeal is timely served.

Pro Se respondents conflate filing with service of the NOA and materially omit that the NOA was timely served. Rule 262, SCACR. Filing and service are not the same. Rule 262, SCACR. Moreover, Pro Se respondents materially fail to cite Rule 203(d), SCACR, regarding filing, which in pertinent part provides, "The notice of appeal shall be filed with the clerk...within 10 days after the notice of appeal is served." In this case, the NOA was timely served which vests jurisdiction and the Clerk of Court has already determined the appeal is timely. *Ex Parte Sadisco of Greenville, Inc., v. Greenville Cty. Bd. Of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000).

VII. The order is appealable under S.C. Code Section 14-3-330(1).

The order is appealable under S.C. Code Section 14-3-330(1) because it involves the merits. An order "involving the merits" is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). Standing is a prerequisite and is "a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008); *Youngblood v. DSS*, 402 S.C.311, 741 S.E.2d 515 (2013). In this case, Pro Se respondents have admitted they have no standing thereby "necessarily affecting the judgment." *Link v. School District of Pickens Cty.*, 302 S.C. 1, 393 S.E.2d 176 (1990). Accordingly, the lower court order on appeal must be vacated/reversed.

VIII. The order is appealable under S.C. Code Section 14-3-330(2).

The order is appealable under S.C. Code Section 14-3-330(2)(a) because it affects a substantial right when such order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." In this case, the order effectively forecloses one party's right to contest the case on the merits including, but not limited to, Pro Se defendants wrongdoing and misrepresentations that they had ownership rights and interests which affects a substantial right and is immediately appealable. *McLaughlin v. Strickland*, 279 513, 309 787 (Ct. App. 1983).

Moreover, the denial of the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right which was denied. S.C. Code Section 14-3-330(2); *see Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15,

2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

The order is also appealable under S.C. Code Section 14-3-330(2)(c) because it affects a substantial right when such order "strikes out an answer or any part thereof or any pleading in any action." This case involves striking any pleadings, including but not limited to, lack of standing and other substantial defense. The Order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Accordingly, the dismissal of appeal must be reversed.

IX. The order is appealable under S.C. Code Section 14-3-330(3).

The order is appealable under S.C. Code Section 14-3-330(3) which allows appellate review of orders affecting a substantial right "made in any special proceeding or upon a summary application in any action after judgment." In the instant case, the lower court proceeding is not a traditional action. It is a "special proceeding." *See Allen v. Partlow*, 3 S.C. 417 (1872). Denial of the right to defend including but not limited to, the right to assert admitted lack of standing is denial of substantial defense without a full and fair review on the entire record, which affects a substantial right in this special proceeding. Accordingly, the dismissal of appeal must be reversed.

X. The order is appealable under S.C. Code Section 14-3-330(4).

The order is appealable under S.C. Code Section 14-3-330(4) because it affects an interlocutory order or decree ... "granting, continuing, modifying, or refusing the appointment of a

receiver." S.C. Code Section 14-3-330(4). The prior lower court order on appeal entered March 14, 2017, provides "thereafter a receiver will be appointed." Order filed on March, 14, 2017. Accordingly, the order and prior orders are appealable under S.C. Code Section 14-3-330(4). *See Williams v. Northwestern Securities Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992).

XI. New case law in *Brooks, infra*, supports review.

New case law in *Brooks, infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

XII. Reliance on the December 2009 order is a violation of State and federal statutory and Constitutional law.

In *Mizell v. Glover*, the South Carolina Supreme Court stated: " We find persuasive the jurisprudence developed by the Fourth Circuit and other federal courts which have recognized that

judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); U.S. v. Jones, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320 (E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. Id. (Citing 5 John H. Wigmore, Wigmore on Evidence § 1671a (James H. Chadbourn rev.1974) (citations omitted))." *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002). "The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Tieco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility determinations)." *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002). Accordingly, the consideration of hearsay in the form of a court order from another matter is reversible error and is contrary to State and Federal constitutional due process safeguards.

XIII. Novel issues regarding new legislation, new statutory law, and new case law support review.

When a case contains a novel question of law, the appellate court is free to decide the question

with no particular deference to the lower court. *Osprey Inc., v. Cabana Limited Partnership*, 340 367, 532 269 (2000). It is respectfully submitted that novel issues regarding the revised S.C. Code Section 15-36-10 and new case law in *Brooks* support review. *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). *See Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

XIV. The 2009 Doe Order is unrelated and, therefore, inapplicable.

The 2009 Doe Order is unrelated, the caption is not the same, the issues are not the same, it is over broad and not time-limited, there was no notice, no hearing, and no opportunity to respond, and the record reflects on its face there is no record to support it which is the definition of abuse of discretion. 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). See *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p. 341.

The FPA, S.C. Code Sec. 15-36-10, is unconstitutional on its face and as applied herein. Controlling precedent establishes that the Amended FPA is inapplicable because the cause of action arose prior to its effective date. *See Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011).

Significantly and materially, the less burdensome legal standard in the Amended FPA was improperly applied and is reversible as a matter of law. Though that improper circuit court Haynsworth order was stayed pending appeal, it was wrongfully reported to the appellate court and while stayed on appeal purportedly pursuant to the inapplicable Amended S.C. Code Section 15-36-10 reporting provision. That improper FPA report effectively functioned as impermissible ex parte communication, thereby preventing and/or thwarting objective judicial review and any meaningful appeal. That improper FPA report resulted in the ex parte and unsupported 2009 order, Doe v. Duncan (DVD). That case is unrelated, it has a different caption, and it involves unrelated issues of conflict of laws and the statute of limitations in a foreign jurisdiction. That DVD order recites and relies on footnote 2 (two), but fails to provide any citation, source, or authority for footnote 2 (two), thereby concealing Haynsworth as the source. Thereafter, that unsupported DVD order in an unrelated case was used to thwart objective, meaningful appellate review of that very circuit court Haynsworth order on appeal. That DVD order was superseded on appeal. As set forth below, that unsupported DVD order in an unrelated case has been used wrongfully by *Pro Se* Legal Malpractice Defendants to deny State and federal Constitutional and Statutory rights, including but not limited to, the right to appear *pro se* and to represent oneself. *See Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017 (Remittitur sent March 3, 2017).

Case law directs that orders be narrowly construed. The Rules of Court shall be construed to do substantial justice and *Pro Se* Legal Malpractice Defendants have misused and abused their position as

officers of the court to escape the merits and evade objective, meaningful judicial review. Accordingly, the appeal should not be dismissed. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

XV. Pro Se Respondents have failed their burden of proving the issues are the same in the unrelated 2009 Doe order with different parties and different issues.

Pro Se Legal Malpractice Defendants have failed their burden of proving the issues in the unrelated 2009 Doe order are the same. It is not res judicata or collateral estoppel. Accordingly, the unrelated 2009 Doe order is inapplicable and dismissal of the appeal must be vacated. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C.

Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully enters Rule 240(i) and240(j), SCACR, Petition for Rehearing for de novo panel review with abeyance and respectfully requests the March 29, 2018, Order dismissing this appeal be vacated/reversed.

Respectfully submitted,

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

Case No. 2007-CP-10-1444

Doe (C. Holmes),

Appellant,

v.

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

Respondents.

NOTICE OF APPEAL

The Appellant appeals the attached order of the 9th Judicial Circuit Judge entered February 9, 2017. Pursuant to Rule 203 and controlling precedent, including but not limited to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016), the Appellant timely files and serves Respondents. All parties required to be served have been served.

Dated 2/11/17

C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

Counsel of Record for Respondents:

Pro Se

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Cynthia Holmes, M.D.,

Plaintiff,

vs.

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

Defendants.

C/A NO: 2007-CP-10-01444

DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") hereby move this Court to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not have any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they request that they be dismissed as Petitioners, and that Haynsworth Sinkler Boyd, P.A. be the sole remaining petitioner in this action. There are no pending claims asserted by Plaintiff against Defendants in this matter. A proposed order is attached.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76198
Post Office Box 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
Facsimile No: (803) 765-1243
ATTORNEYS FOR DEFENDANTS

September 22, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017-002403
Case No. 2007-CP-10-1444

Cynthia Holmes (C. Holmes),

Appellant,

v.

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

Respondents.

Certificate of Service

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

I certify that I have timely served the foregoing petition/motion on the respondents on this date by deposit in the United States Mail, postage prepaid, addressed to M.M. Caskey, 1201 Main Street # 2200, Columbia, SC 29201.

Dated 4/13/18

C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Fax: 803.734.1839

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

Re: App. Case No. 2017-2403

Dear Jenny:

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

1) The filing fee,
2) Seven copies,
3) Proof of Service and a copy, and
4) SASE for return.

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

Very truly yours,