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December 18, 2018

Fax: 803.734.1499 (20 Pages Total)

The Honorable Daniel Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais St.
Post Office Box 11330
Columbia, SC 29201

Re: Case #: 2018-001968

Dear Mr. Shearouse:

Enclosed for filing please find a Petition for a Writ of Certiorari and abeyance request in the above case. Also, enclosed please find the following:

1. Seven (7) copies,
2. Original and one (1) copy of proof of service,
3. Two (2) copies of the Appendix,
4. The $250.00 filing fee, and
5. A stamped, self-addressed envelope for return of copies.

Will you please send me a clocked copy of the proof of service in the enclosed envelope? If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Chalmers C. Johnson

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

RECEIVED

DEC 18 2018

S.C. SUPREME COURT

S.C. Court of Appeals filed June 27, 2018.
COA App. Case No. 2017-001717
App. Case No. 2018-001968

C. Holmes, M.D.,

Appellant/Petitioner,

v.

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

Respondents.

PROOF OF SERVICE
PETITION FOR WRIT OF CERTIORARI

I certify that I have served a copy of the Petition for Writ of Certiorari including Appendix on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to M.M. Caskey, 1201 Main St. #2200, Columbia, SC 29201, on this date and by emailing the same to Ms. Caskey at mcaskey@hsblawfirm.com

Date: December 18, 2018

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PETITION FOR A WRIT OF CERTIORARI

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For Petitioner

INDEX

ISSUES PRESENTED

I. Should a rehearing under SCACR 204(j) reviewing a single Judge's Order be conducted under a *de novo* standard?

II. Did the Court err in determining that there were no appealable issues presented in this appeal where the contempt order and its underlying orders prevented a litigant from defending herself, pro se, in a Court proceeding where her property was at stake?

III. If a party admits to lack of standing to have pursued the underlying action, does this raise a jurisdictional issue which the Court must address when raised?

IV. Are novel issues regarding the constitutionality of the Orders underlying the cause of action leading to the appeal in this case present which the Supreme Court of South Carolina should address, specifically, the constitutionality of an Order prohibiting a citizen from participating, pro se, in a Court Proceeding in her own defense?

CERTIFICATE OF COUNSEL

The undersigned certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals.

STATEMENT OF THE CASE

The order on appeal is a contempt order dated June 21, 2017 (a form order for $2,500.00 in sanctions), and June 23, 2017 (the formal Order from the form order). The Appeal was dismissed by an Order from June 27, 2018 by the Honorable Judge Lockemy. Judge Lockemy dismissed the appeal on the grounds that the appeal addressed an interlocutory discovery order. The petitioner filed a petition for rehearing (July 30, 2018) specifically requesting a review *de novo* of the decision by a panel review as opposed to an application of the Rule 221 rehearing standard (material facts or principal of law overlooked). The petition was denied and the appeal was dismissed by an Order on October 16, 2018 from the three Judge panel. That Order stated "The Court is unable to discover that any material fact or principal of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing." This is that standard language from a Rule 221 petition for rehearing denial and indicates that there was not a de novo consideration of the Order at issue.

It was an error to deny the request for a rehearing de novo by a panel of the single judge opinion (as opposed to applying the Rule 221 rehearing standard). Underlying that, the initial Order should not have dismissed the appeal on the grounds that it addressed an interlocutory discovery order. An interlocutory discovery order may be reviewed if the order contains appealable issues. *Ferguson v. Charleston Lincoln/Mercury Inc.*, 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001). The order on appeal does contain such appealable issues.

ARGUMENT

I. The standard of review for Rule 240(j), SCACR, Petition for Rehearing is *de novo* when a panel is reviewing a decision by an individual judge. It was error to apply the standard for review from a Rule 221 Petition for rehearing.

The Order at issue in this petition, the Order of June 27, 2018, was issued by an individual judge. The rules provide a party may appeal a decision of any one judge to a panel of the Court. S.C. Code § 14-8-220 S.C.; Rule 240(j), SCACR. 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 should stand before the appellate court as if it had never been decided and the June 27, 2018, Order dismissing this appeal should be 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).

Rule 240(j), SCACR, expressly provides for panel appeal and review of order signed by a single judge. "(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court, an individual judge or justice may grant or deny any motion or petition on behalf of the court. Any review of an order issued by an individual judge or justice shall be by petition for rehearing." Rule 240(j), SCACR

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 which underlies Rule 240(j), SCACR, 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. In contrast to Rule 221, SCACR, petition for rehearing, the legal standard of review for Rule 240(j), SCACR, appeal is de novo.

The appellant respectfully requests that the Court accept this case for review and is seeking that it be remanded for a de novo review. There has been a clear misapplication of the Rules of Appellate Procedure in this case.

In addition, the Petitioner is asking that panel conducting the de novo review not include the judge who wrote the original order. 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). Accordingly, the appellant respectfully submits the legislative intent, letter, and spirit of Rule 240(j), SCACR, appeal requires de novo review by a panel of judges, which does not include the individual judge who issued the order.

II. The interlocutory discovery order under appeal is appropriate for appellate review because the order contains appealable issues.

The interlocutory discovery order herein may be reviewed because the order contains appealable issues. *Ferguson v. Charleston Lincoln/Mercury Inc.*, 344 S.C. 502, 544 S.E.2d 285 (Ct.

App. 2001). When an order is appealable in part such as the contempt order herein, the entire order should be considered on appeal. *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). An order not immediately appealable will nonetheless be considered if there is an appealable issue, and a ruling on appeal will avoid unnecessary litigation. *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998).

The interlocutory discovery order in this case may be reviewed because it contains appealable issues and the order of dismissal should be vacated/reversed. Specifically, the June 21, 2017, form order shows it is a contempt order. It is well-settled that a party can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt. On appeal from the contempt order, the contemnor may argue that the contempt finding must be reversed because the underlying discovery order was itself improper. *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008). In this case, the efficacy of the order of reference herein is challenged including, but not limited to an assertion that the discovery order underlying the contempt order was itself improper. A contempt order is a final order that is immediately appealable. *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003); *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999).

The appellate court may review any intermediate order necessarily affecting the order on appeal including, but not limited to, the ex parte February 9, 2017, order which claims there was a hearing and which wrongfully denies the appellant fundamental rights, equal protection, privileges and immunities guaranteed by the State and federal Constitutions and State and federal statutory rights as well as the right to defend. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999). The interlocutory discovery order herein may be reviewed because it contains appealable issues.

A. 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, 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). Moreover, the ex parte February 9, 2017, order essentially determines the case by denying one side the right to defend and fundamental rights, equal protection, privileges and immunities guaranteed by the State and federal Constitutions and State and federal statutory rights. Accordingly, dismissal must be vacated/reversed.

B. 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, 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).

The Supreme Court has appellate jurisdiction for correction of errors of law in law cases, and reviews upon appeal "(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action." An order that effectively forecloses a party from contesting the case on the merits affects a substantial right under section 14-3-330(2) and is immediately appealable.

McLaughlin v. Strickland, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983).

The case of *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009), supports appeal of the contempt order because this appeal is based on denial of State and federal constitutional rights, including but not limited to, the right to proceed pro se. *See Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). New case law in *Brooks, supra,* is controlling and confirms State and federal constitutional and statutory rights to appear *pro se*. The February 9, 2017, order denies the appellant's fundamental rights, equal protection, privileges and immunities guaranteed by the State and federal Constitutions and State and federal statutory rights as well as the right to defend. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999). Denial of fundamental rights including, but not limited to, denial of the right to defend, denial of the right to make an adequate record for appeal, the striking of all pleadings now and in perpetuity, denial of any discovery, denial of the right to call witnesses and present evidence affects substantial rights which cannot be vindicated on appeal. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11(2000). In addition, the February 9, 2017, order effectively forecloses a party from contesting the case on the merits 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 is immediately

appealable. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

C. 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. Summary application is unconstitutional in this incidental/collateral matter where the right to trial by jury on issues of fact has been denied. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (*to show cause*), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). In this case, the revised FPA statute is unconstitutional under the state and/or Federal Constitutions because it denies the right to jury trial and it denies other Constitutional protections. Further, summary remedy in this case is unconstitutional because the revised FPA is not applicable. In the underlying case, the trial judge denied legal malpractice defendants' motion for summary judgment which precludes sanctions under the prior FPA statute and decisional law in effect at the pertinent time. *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). Accordingly, the dismissal of appeal must be reversed. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*,

376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV.

D. 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 appellate court may review any intermediate order necessarily affecting the order on appeal including, but not limited to, the intermediate March 14, 2017. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999). That intermediate order on appeal entered March 14, 2017, provides "thereafter a receiver will be appointed." Order filed on March, 14, 2017. Accordingly, the order and the intermediate 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).

III. The Respondents have admitted lack of standing, raising jurisdictional considerations.

Defendants filed motion in this circuit court Case # 2007-CP-10-01444 asserting that 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, correspondence from the Court on February 24, 2017, memorializes Respondents representations to this Honorable Court that the only Respondents are the Respondents who now admit lack of standing. There has been no order of substitution and no motion for substitution. Accordingly, Defendants have admitted lack of standing, therefore, the motion to dismiss must be vacated.

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. By the motion, granted by the Circuit Court, Respondents have admitted they have no ownership rights or interests herein and, therefore, lack standing to have brought the motion to dismiss which resulted the Order now under petition for review. *Georgetown Cty. League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 713 S.E.2d 287 (S.C. 2011). 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). the motion to dismiss which formed the basis of the Order under petition for review should be vacated.

IV. Respondents did not pay the required filing fees that other lawyers, other parties, and other members of the public would be required to pay, therefore, Respondents' lower court action was pursued under a lack of jurisdiction.

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.

The Respondents failed to pay a required fee in the circuit court to initiate this action. Defendants matter in the lower court should never have been allowed to be initiated and should be considered to be commenced without jurisdiction. All motions and orders must be accompanied by a $25.00 fee. There is a $25.00 fee assessed for the petition and there is a $25.00 fee for the appointment

of a referee/master. The public index reveals that the fees were not paid, yet the action was commenced. Without the requisite fees, the order of reference is invalid and there is no jurisdiction. By analogy, Rule 203(d)(3), SCACR, provides if the filing fee is not paid in full, the matter shall be dismissed and shall not be reinstated except by leave of the court upon good cause shown. Rule 203(d)(3), SCACR; *see Douglas v. State*, 332 S.C. 67, 504 S.E.2d 307 (1998); Toal *et al.*, *Appellate Practice in South Carolina* (2d ed. 2002), p. 124.

V. Appealable issues may include review the intermediate February 9, 2017, order because it necessarily affects the order on appeal by denying the right to defend and denying fundamental rights.

The appellate court may review any intermediate order necessarily affecting the order on appeal including, but not limited to, the ex parte February 9, 2017, order which claims there was a hearing when Petitioner asserts that no such hearing occurred, and which wrongfully denies the appellant fundamental rights, equal protection, privileges and immunities guaranteed by the State and federal Constitutions and State and federal statutory rights as well as the right to defend. *SCDOT v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999). That ex parte February 9, 2017, order denies substantial rights, denies the right to defend, denies meaningful opportunity to be heard, and denies the right to adequate record for meaningful judicial review on appeal. "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.

A. The intermediate February 9, 2017, order because it necessarily affects the order on

appeal by striking another presiding judge's pending Rule 60, SCRCP, and other motion without valid order of reference and resulted in an unconstitutional taking of fling fees which had been paid by the Petitioner

The February 9, 2017 order strikes another presiding judge's pending Rule 60, SCRCP motion without valid order of reference and without authority, which is vested in the presiding circuit court judge, not the referee/master. Wrongful disposition of Rule 60, SCRCP, and other motion is appealable. Confiscation and/or taking of unearned filing fees is also appealable. The fees that the Petitioner paid to the Court were never returned when her motion was rejected and are currently unaccounted for.

B. Unpublished orders have no precedential value and should not be cited or relied on except in proceedings in which they are directly involved per Rule 268(d)(2), SCACR; the ex parte February 9, 2017, order is appealable because it recites and relies on an unpublished order with different caption, different case number, different parties, and different issues.

The February 9, 2017, order expressly relies on an unspecified, unnamed December 3, 2009, order. In fact, the Advance Sheets show there is no published December 3, 2009, South Carolina Supreme Court order. Unpublished orders have no precedential value and should not be cited or relied on except in proceedings in which they are directly involved. Rule 268(d)(2), SCACR. The unspecified, unpublished *John Doe* order has a different case number, different caption, different parties, different issues, no privity, no collateral estoppel, and no res judicata effect on the case from which the Order under appeal in this case arose. The February 9, 2017 order relies on an unpublished December 3, 2009, order to deprive plaintiff of individual, property, and Constitutional rights, including but not limited to, the right to self-representation. *See Brooks v. SCCID and OID,* South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477. It is an underlying Order and certainly presents an

appealable issue.

VI. 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. This case involves Court Orders which prohibit a citizen from defending herself as a pro se litigant in any Court in the State. This appears to be a novel issue and one that should be of major concern to the South Carolina Courts.

CONCLUSION

The Petitioner has presented a Petition for a Writ of Certiorari requesting that the Supreme Court review what has happened in this case and this appeal. There is one simple legal error, the misapplication of a standard of review in consideration of the petition for rehearing. This can be

rectified by simply remanding the case to the panel with instructions to consider the issues raised in the underlying motions de novo. As to the "bigger picture" there appears to have been a veritable litany of injustices and errors in this case, starting with an extremely questionable filing of the action at the beginning, a master being appointed without any fees paid, one judge nullifying a rule 60 motion directed to another Judge, confiscation of fling fees, deliberately hobbling a citizen's right to defend herself in a Court action in which ha party is seeking to take her property and then what seems to be effort after effort to keep these matters from ever being presented on their merits through an appeal. It is, to say the least, disturbing. The Supreme Court is the ultimate source of justice in our State. As it states above the bench, there is none higher. The Petitioner respectfully requests the opportunity to bring these matters before the Court for review and asks that the Court grant her a hearing.

Respectfully submitted,

12-18-18

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