THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas.

9th Judicial Circuit Court Judge

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.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-001717

Cynthia Holmes, M.D.,

Appellant,

v.

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

Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL AND TO HOLD DEADLINES IN ABEYANCE

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INTRODUCTION

Respondents James Y. Becker, Manton Grier, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. ("Respondents"), submit this Motion to Dismiss Appellant Cynthia Holmes' ("Holmes'") Appeal (the "Appeal") on the grounds that the order at issue is an un-appealable interlocutory order. Respondents also request that this Court stay Respondent's deadline to file its response to Holmes' initial brief pending the outcome of this Motion to Dismiss.

STATEMENT OF THE FACTS

The underlying action stems from litigation commenced by Holmes against East Cooper Community Hospital ("East Cooper"), during which she was represented by Respondents. The facts surrounding this litigation are not in dispute. On April 6, 2007, Holmes brought a malpractice action against Respondents arising from litigation Holmes commenced against East Cooper following the hospital's decision to revoke her medical staff privileges. On Holmes' behalf, Respondents unsuccessfully appealed for reinstatement of admitting privileges through East Cooper's administrative process and, later, filed a lawsuit in federal court. The relationship between Holmes and Respondents deteriorated, and Holmes subsequently filed the malpractice action. After protracted litigation over Respondents' handling of her case against East Cooper, Holmes' claims against Respondents were dismissed, and the trial court issued an order of sanctions against Holmes in the amount of $200,000.00 (the "Judgment"). The Judgment was affirmed by this Court on June 4, 2014. *See Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

In November 2016, the Respondents commenced formal efforts to collect the Judgment. Respondents filed a Verified Petition on January 3, 2017, to commence supplementary

proceedings to determine whether Holmes has assets to apply toward satisfaction of the Judgment. On January 18, 2017, the Court issued a Rule to Show Cause, requiring Holmes to produce certain documents and appear, and a hearing was scheduled for March 10, 2017. At the hearing, the Court orally informed Holmes that it would not entertain any motions filed by Holmes, unless they were filed by a South Carolina licensed attorney. The Court further directed her to produce the documents requested by Respondents. On March 9, 2017, the Court filed its Supplemental Proceeding Order, commanding Holmes to provide documentation of assets to Respondents by April 14, 2017. After Holmes failed to produce all of the documents set forth in the Supplemental Proceeding Order, the Court entered its Order Granting Respondents' Motion to Compel & for Sanctions (the "Order"). Holmes now seeks to appeal the Order.

ARGUMENT

The Order is an un-appealable interlocutory order and, accordingly, the Appeal is impermissible. The law is well-settled that "[t]here are only four basic situations from which a party may appeal: (1) intermediate judgments, orders or decrees involving the merits, (2) orders affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying, or refusing injunctions." *Crout v. South Carolina Nat'l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982).

Here, the Order does not fall under any of the appealable categories, as it does not terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, the only matter currently pending before the Circuit Court is Respondent's Rule to Show Cause, the purpose of which is to determine whether Holmes has

assets to apply toward satisfaction of the Judgment. Simply requiring a party to comply with a court order to produce documents and levying sanctions against the party for failing to comply with the court's order, then, does not affect the merits of the matter before the Circuit Court. Thus, the Order is un-appealable, and the Appeal must be dismissed.

CONCLUSION

Holmes' Appeal because the Order on appeal is an un-appealable order. Thus, this Court should grant Respondent's Motion to Dismiss. In addition, based on the foregoing, Respondent respectfully requests that this Court hold all deadlines, including the deadline for Respondent to file its response to Holmes' initial brief, in abeyance pending resolution of this Motion to Dismiss.

Respectfully submitted,

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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 - 001717
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

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

Respondents.

APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

The Respondents' motion to dismiss raises one objection to this appeal. Respondents argue that the orders appealed do not fall within the purview of South Carolina Code section 14-3-330. This code section describes the types of orders that fall within the jurisdiction of the Supreme Court (and thereby the appellate court) for appeal. Here is the applicable code section governing appealability of Orders:

S.C. Code 14-3-330. Appellate jurisdiction in law cases.

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(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;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

The lower Court, in this case, is presiding over the Respondents' attempt to collect a very large judgment against Dr. Holmes, to include, apparently, an attempt to possess and sell her home. The Court issued an Order which struck all motions that Dr. Holmes had filed in her defense and precluded her from filing any future motions, thereby stripping her of any ability to defend herself and her estate from the onslaught of the Respondents.

Judge Scarborough's Order states:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

"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.

Most recently, Dr. Holmes was the subject of an order regarding sanctions, which, the Judge who issued the order has precluded her from taking any action to challenge. This appeal is important. It addresses a severe restriction, if not the extinguishing of a Citizen's right to defend herself and her property in Court. In the interests of Justice, the matter should be heard.

I. 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).

A. Standing

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, Grier and Becker have admitted they have no standing, obtaining an Order from

the lower court removing them from the case as they deny any interest in the judgment sought. If the parties who brought the action have no standing, then this is something that is "necessarily affecting the judgment." *Link v. School District of Pickens Cty.*, 302 S.C. 1, 393 S.E.2d 176 (1990).

B. The Orders under appeal finally determine a substantial matter forming part of the defense.

Historically, the Courts have found the term "involving the merits" to be "a difficult one to define so as to cover every possible case that may arise. Lowndes v. Miller, 25 S.C. 119 (1886). In Mid-State Distributors, Inc. v. Century Importers, Inc., the Supreme Court refined the definition of "involving the merits," creating the modern definition. 310 S.C. 330, 426 S.E.2d 777 (1993). In that case, the Court declared that an order "involving the merits" is one that "must finally determine some substantial matter forming the whole or a part of the cause of action or defense." Id. This case, at least in the undersigned's experience, appears to raise a unique question because the Court's Order, refusing to allow Dr. Holmes to file any motion or pleading at all to defend herself in a collection action arises from the application or mis0application of an Order unique to Dr. Holmes. Considering the impact this decision would have on any party, in any case, it seems that this issue would finally determine a substantial matter forming the whole of the defense, as it basically precludes Dr. Holmes from making one.

II. 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).

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).

Relatively 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).

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).

III. 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, denial of substantial defense without a full and fair review on the entire record affects a substantial right in this special proceeding.

IV. 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).

V. The lower court's 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.

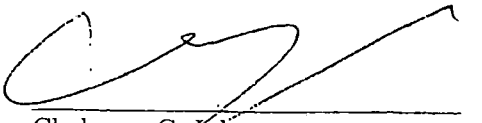
VI. Novel issues regarding new legislation, new statutory law, and new case law support review.

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.

CONCLUSION

The appeal in this case is properly taken, pursuant to the applicable rules. It raises issues of constitutional importance and addresses the revocation of a substantial if not one of the most substantial rights of a citizen of this State. The Appellant respectfully requests that the Court

deny the Respondents' motion to dismiss and issue a briefing schedule so that this appeal can be considered on its merits.



Chalmers C. Johnson
Attorney for the Appellant

May 5, 2018

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

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

Appellate Case No. 2017-001717

ORDER

Respondents' motion to dismiss this appeal is granted because the underlying discovery order is not immediately appealable under section 14-3-330 of the South Carolina Code (2017). *See Patterson v. Spector Broad. Corp.*, 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985) (holding an order compelling a party to submit to discovery is interlocutory and not directly appealable).

FOR THE COURT

Columbia, South Carolina

cc:
Chalmers Carey Johnson, Esquire
Mary M Caskey, Esquire

FILED
June 27, 2018

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. 2017-01717

C. Holmes,

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

Respondents.

Rule 240j, SCACR, Petition for Rehearing *De Novo* Panel Review

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Appellant hereby submits her Petition for Rehearing with abeyance request pursuant to Rule 240(j), SCACR, which requires *de novo* panel review of an individual judge's dismissal of appeal. It was an error to dismiss the appeal because it addressed an interlocutory discovery order. An interlocutory discovery order may be reviewed if the order contains appealable issues. The record reflects the order on appeal does contain such appealable issues. *Ferguson v. Charleston Lincoln/Mercury Inc.*, 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001). Dismissal of appeal by a single judge may and, in this case should be subjected to a de novo panel review. In the alternative, appellant respectfully requests deferral of decision on the motion to dismiss until consideration of Final Briefs and the Record on Appeal in this case.

I. The standard of review for Rule 240(j), SCACR, Petition for Rehearing is *de novo*.

Questions of law are reviewed de novo. S.C. Const. art. V, § 5. The June 27, 2018, order dismissing the appeal was issued by an individual judge. The rules state that 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 to preserve the integrity of the process and for the Court's self-preservation among other reasons, particularly in South Carolina where judges are subject 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 June 27, 2018 order dismissing 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 June 27, 2018, order and a panel 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 and Appellant seeks redress under the code and the rule.

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).

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." 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.

Meaningful review on appeal under Rule 240(j), SCACR, and S.C. Code § 14-8-220 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. As a threshold matter, Respondents have admitted lack of standing.

Defendants/Respondents filed a motion in this circuit court Case # 2007-CP-10-01444. By that motion, Respondents have now admitted they have no ownership rights or interests in the judgement at issue in this case and, therefore, lack standing to participate in the case. *Georgetown Cty. League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 713 S.E.2d 287 (S.C. 2011). Further, the attached copy of this Honorable Court's correspondence dated 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.

III. As a threshold matter, Respondents have admitted lack of standing, therefore, Respondents have admitted lack of jurisdiction to file motion to dismiss.

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 attached motion, Respondents have 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). Without standing, there is no jurisdiction to file motion to dismiss. 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). Accordingly, the motion to dismiss must be vacated. See attached copy of this Honorable Court's correspondence dated February 24, 2017, and Respondents' motion in the circuit court in Case # 2007-CP-10-01444 admitting lack of standing.

IV. As a threshold matter, the record reflects 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 shall be dismissed for lack of jurisdiction.

Defendants failed to pay the required fees in the circuit court that other lawyers, other parties, and other members of the public would be required to pay, therefore, Defendants matter in the lower court is unofficial, in individual capacity, unauthorized, and/or without jurisdiction and shall be dismissed. The public index reflects legal malpractice defendants, untrustworthy officers of the court, were given a "pass" and not required to pay the official filing fees that other lawyers, parties, and members of the general public are required to pay. All motions and orders are $25.00 each. There is a $25.00 fee for the petition and there is a $25.00 fee for the referee/master. The attached copy from the public index reveals inadequate fees. 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. Accordingly, there is no jurisdiction and Respondents' motion to dismiss the appeal must be vacated.

V. 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.

VI. The interlocutory discovery order may be reviewed 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). Specifically, the attached 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, the discovery 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 falsely 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.

VII. When an order is appealable in part such as the contempt order herein, the entire order is considered on appeal.

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 herein may be reviewed because it contains appealable issues and the order of dismissal should be vacated/reversed.

VIII. The appellate court may 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 falsely 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). 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 interlocutory discovery order herein may be reviewed because it contains appealable issues. "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.

IX. The appellate court may review 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 without authority which is vested in the presiding judge, not the referee/master; wrongful disposition, wrongful confiscation/taking of unearned filing fees, and/or lack of jurisdiction for pending Rule 60, SCRCP, and other motion is appealable.

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 falsely claims there was a hearing and which wrongfully strikes another presiding judge's pending Rule 60, SCRCP, and other motion without valid order of reference and without authority which is vested in the presiding circuit court judge, not the referee/master. See attached true copy of the blank/incomplete order entered January 3, 2017, pending plaintiff's motion to dismiss Respondents' unverified petition. The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). See attached correspondence from the Charleston County Clerk of Court documenting scheduling and jurisdiction with the presiding judge who signed the order, which is not the referee/master. Wrongful disposition of Rule 60, SCRCP, and other motion is appealable and is hereby appealed. Confiscation and/or taking of unearned filing fees is also appealable. Those fees are unaccounted for to date. The interlocutory discovery order herein and any intermediate order necessarily affecting the order on appeal may be reviewed because it contains appealable issues. "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.

X. 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.

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). In this case, the ex parte February 9, 2017, order, which falsely claims there was a hearing, wrongfully 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). The orders on appeal affect a substantial right under section 14-3-330(2) and are immediately appealable.

XI. The ex parte February 9, 2017, order is appealable because it strikes all pleadings of one party, it denies that party the right to file any pleadings in perpetuity, it prevents adequate record for meaningful appeal, and it essentially determines the case.

The Court of Appeals has appellate jurisdiction of an order affecting a substantial right made in an action when such order "strikes out an answer or any part thereof or any pleading." S.C. Code Ann. Section 330(2)(c); Toal *et al., Appellate Practice in South Carolina* (2d ed. 2002), p. 91. The interlocutory discovery order herein may be reviewed because the order contains appealable issues.

The attached form order dated June 21, 2018, is a contempt order which is immediately appealable along with any intermediate orders necessarily affecting that order. The ex parte 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).

XII. The contempt order on appeal affects a substantial right under section 14-3-330(2) because it denies State and federal Constitutional rights and State and federal statutory rights to represent oneself and is immediately appealable.

The case of *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009), supports appeal of the contempt order because this appeal is based on denial of State and federal constitutional rights, including but not limited to, the right to proceed pro se. *See Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). New case law in *Brooks, supra*, is controlling and confirms State and federal constitutional and statutory rights to appear *pro se*. The February 9, 2017, order denying Appellant's right to represent oneself necessarily affects all subsequent orders including the attached June 21, 2017, form order and the June 23, 2017, order. Accordingly, the interlocutory discovery order herein may be reviewed because the orders contain appealable issues.

XIII. The orders on appeal herein, which were entered pending appeal in COA App. Case No. 2017-00266 and before remittitur, violate exclusive appellate jurisdiction and must be vacated. Rule221, SCACR. 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 orders on appeal herein, which were entered pending appeal in COA App. Case No. 2017-00266 and before remittitur, violate exclusive appellate jurisdiction and must be vacated. Rule221, SCACR. 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/collateral 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; the orders on appeal herein, which were entered pending appeal in COA App. Case No. 2017-00266 and before remittitur, violate exclusive appellate jurisdiction and must be vacated. Rule221, SCACR. Moreover, any dispute regarding the application of automatic stay is resolved in the appellate court and respondents failed to motion the appellate court for the appellate court's permission. *See Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014).

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

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 employee 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 motion to dismiss must be vacated/reversed.

XV. 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.

XVI. 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).

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 appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). Accordingly, the dismissal of appeal must be reversed.

XVII. 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.

XVIII. 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).

XIX. 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). The *Brooks* case., *supra*, was decided on February 15, 2017, after the ex parte February 9, 2017, order on appeal herein and this new precedent is controlling. 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 orders are immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

XX. 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.

XXI. Respondents wrongfully seek to prejudice the case with a remote, inapplicable, and superseded John Doe order in an unrelated case with different case number, different caption, and unrelated issues.

The purported John Doe order referenced in the ex parte February 9, 2017, 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 on its face, there is no record to support it, which is the definition of abuse of discretion. Moreover, that order is inapplicable because 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 revised 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). The presiding judge denied defendants motion for summary judgment which precludes sanctions under the applicable FPA and decisional law in effect at all times material thereto.

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 FPA order was stayed pending appeal, it was wrongfully reported to the appellate courts pursuant to the inapplicable revised FPA reporting provisions. That improper FPA reporting to the appellate courts 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 John Doe order, a copy of which is attached for ease of reference. 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. It is not res judicata or collateral estoppel.

That John Doe order recites and relies on footnote 2 (two), but fails to provide any citation, source, or authority for footnote 2, thereby concealing the Haynsworth FPA order as the source of footnote 2. Thereafter, that unsupported John Doe order in an unrelated case was used to thwart objective, meaningful appellate review of that Haynsworth FPA order then pending appeal. See attached copy of December 16, 2009, order by the former COA Chief Judge documenting use of the Haynsworth FPA order in that footnote 2. What is clear from the record of that December 16, 2009, Court of Appeals Haynsworth order is that the Haynsworth FPA order, then stayed on appeal, was used in that footnote 2 of unrelated John Doe order to prevent appellant from pursuing meritorious appeal of that very Haynsworth FPA order, then stayed pending appeal. That unsupported John Doe order in an unrelated case has been used wrongfully by Legal Malpractice Defendants to prejudice this case and 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 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 proceed because the order contains appealable issues. "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

Appellant respectfully enters Rule 240(j), SCACR, Petition for Rehearing *De Novo* Panel Review with abeyance and respectfully requests the June 27, 2018, Order dismissing this appeal be vacated/reversed. In the alternative, appellant requests decision on the motion to dismiss be deferred for consideration with Final Briefs and the Record on Appeal.

Respectfully submitted,

Chalmers Johnson
2965 Beach Dr. E
Port Orchard, WA 98366
425.999.0900
Attorney for the Appellant

July 30, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

C Holmes

-v-

Haynsworth, Sinkler, Boyd

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER:

2007-CP-10-1444

SUPPLEMENTAL PROCEEDING ORDER

FILED
2017 JUN 21 AM 9:35
JULIE J. ARMSTRONG
CLERK OF COURT

A Hearing was held in the above captioned case on 6/16/17

____ 1. No assets were discovered.

____ 2. The Defendant agreed to pay _____

____ 3. The hearing was not held because . _____

____ a. the Defendant was not served and the hearing has been rescheduled for _____

____ b. the Defendant did not appear and a RTSC has been scheduled for _____

____ c the parties requested the hearing be rescheduled for _____

____ d. the Plaintiff elected not to proceed.

X e. D is required to provide documents to P counsel. $2500 contempt sanction is issued. An Order to Bank of America to Comply/Subpoena issued for information is entered. Formal OTF.

____ e. The supplemental proceedings is held open until _____

____ 5. The supplemental proceedings is dismissed and canceled without prejudice. All Restraining Orders and Injunctions are hereby lifted, canceled, voided and dismissed.

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, SC
Dated: 6/16/17

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

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

Appellate Case No. 2017-001717

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

Paul E. Short, Jr. J.

J. B. Van J.

Columbia, South Carolina

FILED
October 16, 2018

cc:
Cynthia Holmes
Chalmers Carey Johnson, Esquire
Mary M Caskey, Esquire
Julie J. Armstrong