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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court of South Carolina

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Jennifer B. McCoy

Case No.: 2007-CP-10-01444  
App. Case No.: 2021-000451

Cynthia Holmes, M.D. .... Respondent/Appellant,

v.

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

Of which Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,  
Is the ..... Appellant/Respondent.

**APPELLANT/RESPONDENT'S RETURN TO  
PETITION FOR WRIT OF CERTIORARI**

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## COUNTER-STATEMENT OF THE CASE

This appeal is the result of a lengthy period of litigation between the parties.<sup>1</sup> Haynsworth Sinkler Boyd, P.A. (“HSB”) holds a judgment against Cynthia Holmes (“Holmes”) entered on November 18, 2009, in the principal amount of \$200,000.00 (the “Judgment”).<sup>2</sup> As of May 13, 2020, the amount due on the Judgment was \$436,924.02. The Judgment arose after Holmes sued HSB for malpractice in connection with HSB’s representation of her in litigation against East Cooper Community Hospital concerning the revocation of Holmes’s medical staff privileges. Holmes’s malpractice claims against HSB were ultimately dismissed in their entirety after protracted litigation, and the trial court issued the Judgment as an award for sanctions against Holmes. The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014, in *Holmes v. Haynsworth Sinkler Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the litigation between Holmes and HSB, the South Carolina Supreme Court directed the Clerks of Court in South Carolina to refuse to accept any further filings from Holmes that were related in any way to the revocation of Holmes’s hospital privileges unless the documents were filed by an attorney, other than Holmes, who was licensed to practice law in South Carolina. (*See Order*, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009) (the “Doe Order”).) Holmes’s legal license was also suspended in 2014 and has not yet been reinstated. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014).

HSB began its efforts to collect the Judgment in 2016 by sending a demand letter to Holmes that went unanswered. The writ of execution was sent to the Charleston County Clerk of Court

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<sup>1</sup> HSB’s Counter-Statement of the Case is largely procedural, as Holmes’ Cross-Appeal does not relate to the merits of the underlying litigation.

<sup>2</sup> Although the Judgment was entered in favor of all Sinkler & Boyd, P.A., Manton M. Grier, and James Y. Becker, HSB, as successor to Sinkler & Boyd, P.A., is the only Defendant pursuing the Judgment at this time. James Y. Becker and Manton M. Grier are employees of HSB.

for attestation on October 19, 2016, and the sheriff returned the writ of execution marked *nulla bona* on December 8, 2016. Thereafter, HSB filed a Verified Petition to commence supplementary proceedings pursuant to S.C. Code § 15-39-310 on January 3, 2017.

The Court issued a Rule to Show Cause on January 18, 2017, and scheduled a hearing for March 10, 2017. In preparation for the hearing, HSB sent a notice of deposition and a first request for production to Holmes on January 20, 2017. Holmes did not answer the written discovery or appear at the deposition scheduled for March 2, 2017. Instead of complying with her obligations under the South Carolina Rules of Civil Procedure, Holmes filed three motions *pro se* after receiving the Verified Petition, including a motion for sanctions against HSB for pursuing the Judgment and a motion to quash the discovery against her.

Holmes appeared at the hearing on March 10, 2017, but failed to produce the documents as ordered by the Court. The Court informed Holmes that it would not entertain any motions filed by her *pro se* due to the Doe Order. On March 14, 2017, the Court entered its Supplemental Proceedings Order in which Holmes was ordered to provide documentation of her assets to HSB by April 14, 2017. Holmes never complied with the Supplemental Proceedings Order. The only financial documents that Holmes has ever produced to HSB were her 2014 and 2015 tax returns, and she failed to provide all other documentation of her assets and ability to satisfy the Judgment.

Through its independent efforts, HSB identified the property located at 1611 Poe Avenue, Sullivan's Island, SC 29482 (the "Property") as an asset of Holmes that was available to apply towards the Judgment. After completing a title search on the Property, HSB identified a mortgage held by Bank of America. HSB sent a subpoena to Bank of America to determine the mortgage balance on the Property, but Holmes filed a motion to quash in response without any legitimate reason to support it. In light of the motion to quash, Bank of America refused to respond to HSB's

subpoena.

HSB filed a Motion for Contempt and Sanctions after Holmes refused to comply with the Supplemental Proceedings Order, which was granted following a hearing on June 21, 2017. Despite the June 21, 2017, Order, Holmes continued her efforts to prevent HSB from collecting the Judgment. Holmes failed to provide any additional documents to HSB despite the Order and multiple letters from Ms. Caskey. To date, Holmes has only ever produced copies of the same tax returns she originally produced, despite repeated orders to produce complete responses to the Rule to Show Cause Order.

In addition to her antics before the trial court, Holmes filed eight appeals to this Court. All of them were dismissed. She also continued to file motions in the collection action in which she challenged almost every order entered by the Court and attempted to overturn the Court's orders and thwart HSB's attempts at legitimate discovery and collection. Holmes also filed numerous petitions for rehearing and petitions for writ of certiorari with the South Carolina Court of Appeals and the South Carolina Supreme Court, all of which were denied or dismissed.

To avoid the hearing and the sale of the Property, Holmes filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on March 22, 2019, Case No. 19-10644, in the Bankruptcy Court for the District of South Carolina (the "Bankruptcy Case"). The Bankruptcy Case stayed the ability of HSB to collect the Judgment pursuant to 11 U.S.C. § 362. During the Bankruptcy Case, Holmes continued to file multiple motions, appeals, and pleadings to try and prevent HSB from pursuing its claim based on the Judgment before it expired.

On May 12, 2020, Holmes received a discharge pursuant to 11 U.S.C. § 727, and the automatic stay was lifted. Only then was HSB able to pursue its claim based on the Judgment. Immediately after the Discharge Order was entered, HSB filed its Emergency Motion for

Expedited Order of Execution and Sale of Property and Issuing Notice of Sale (“Motion for Execution”) on May 14, 2020. HSB’s Motion for Execution was denied in an Order issued by Judge Jennifer McCoy dated June 11, 2020. HSB filed a Motion to Reconsider on June 22, 2020, which was denied in a Form 4 on June 26, 2020. Shortly thereafter, HSB filed its Notice of Appeal on June 30, 2020 (the “Appeal”), and Holmes filed her Notice of Cross-Appeal August 4, 2020 (the “Cross-Appeal”). While the Appeal sought only to appeal orders entered by the lower court dated June 11, 2020 and June 26, 2020, the Cross-Appeal sought to appeal orders entered by the lower court dated January 3, 2017, January 18, 2017, February 9, 2017, March 14, 2017, June 23, 2017, September 29, 2017, April 9, 2019, and June 26, 2020, “as well as intermediate orders.” Each of the orders Holmes sought to appeal were dated prior 2020 and were already the subject of multiple failed appeals— and have been dismissed. *See* Appellate Case Nos. 2017-000266, 2017-001460, 2017-001717, 2017-002403, and 2019-000880.

On August 14, 2020, Holmes sent a letter to Christine Smith, the court reporter for the Charleston County trial court, requesting transcripts for hearings dated March 10, 2017 and June 16, 2017. On October 7, 2020, and in response to a letter from Holmes’ counsel requesting an update on the status of the transcript request, Ms. Smith wrote Holmes and informed her that she would resend the requested transcripts, and further noted that she previously sent Holmes the requested transcripts on August 13, 2020. On October 17, 2020, Holmes filed a Notice of Receipt of Transcript for Cross-Appeal affirming that Holmes’ received the subject transcripts on October 11, 2020. Pursuant to Rule 208(a)(1), Holmes’ Initial Brief was due on November 11, 2020, thirty (30) days after Holmes received the transcript. *See* Rule 208(a)(1), SCACR. However, Holmes did not file her Initial Brief until November 15, 2020.

Based on Holmes' untimely filing, HSB filed its Motion to Dismiss Cross-Appeal on December 15, 2020. The Court of Appeals granted the motion in part on February 4, 2021, dismissing Holmes' Cross-Appeal of the 2019 and 2017 orders because the Cross-Appeal was untimely as to those orders. Holmes filed a Motion to Reconsider shortly thereafter, and the Court denied Holmes' motion on March 29, 2021. Presently, the only Orders on appeal under the Cross-Appeal that are pending before this Court are the June 10, 2020 order denying relief and the June 26, 2020 order denying the motion to reconsider (the "2020 Orders").

### **ARGUMENT**

It is firmly established that "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special or important reasons." Rule 242(b), SCACR. Although not exclusive, the SCACR identifies several factors that "indicate the character of reasons which will be considered." *Id.* Such factors include instances where: (1) there are novel questions of law; (2) there is a dissent in the Court of Appeals' decision; (3) the Court of Appeals' decision conflicts with a prior decision of the Supreme Court; (4) the petition directly involves substantial constitutional issues; and (5) the petition includes a federal question and the Court of Appeals' decision conflicts with a decision of the United States Supreme Court. *Id.*

As is apparent from HSB's Counter-Statement of the Case, Holmes' Cross-Appeal arises from (what should be) a straightforward state law collection action. HSB received the Judgment in its favor in the original state law malpractice action and subsequently initiated supplemental proceedings to collect that Judgment in state court. There are no issues present in the underlying case that invoke any constitutional issues or involve any federal question. Holmes' Petition does not even attempt to identify any novel questions of law, indicate that there is a dissent within the Court of Appeals' decision, or point to any aspect of the Court of Appeals' decision that conflicts

with a decision of the United States Supreme Court. It is clear, then, that Holmes has failed to articulate any “special or important reasons” to grant her Petition. Instead, Holmes’ Petition essentially boils down to three arguments: (1) that the Court of Appeals did not have the authority to dismiss Holmes’ Cross-Appeal in part on the grounds that it is untimely as to certain orders; (2) that the Court of Appeals improperly construed Holmes’ Motion pursuant to Rule 240(j), SCACR as a Petition for Rehearing; and (3) that the panel that considered Holmes’ Petition for Rehearing improperly included the same judge who issued the February 4, 2020 Order. Even if these contentions were special or important enough to warrant consideration of her Petition, each of these arguments fails. Thus, the Court should decline to grant Holmes’ Petition.

**I. The Court of Appeals properly dismissed Holmes’ appeal.**

The SCACR provide that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order of judgment.” Rule 203(b)(1), SCACR. “[T]he time to file a notice of appeal pursuant to Rule 203(b), SCACR, begins to run when written notice that the order has been entered into the record by the clerk of court has been received.” *Upchurch v. Upchurch*, 367 S.C. 16, 25, 624 S.E.2d 643, 647 (2006). Courts have unequivocally held this Rule is jurisdictional, and that “if a party misses the deadline [to serve the notice of appeal], the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)). A party’s failure to serve their notice of appeal after the time limits set forth in Rule 203(b) thus “divests th[e] court of subject matter jurisdiction and results in dismissal

of the appeal.” *Id.* A party may raise lack of subject matter jurisdiction at any time, and a court may raise the issue *sua sponte*. See *Hicks v. Ferreyra*, 965 F.3d 302, 310 (4th Cir. 2020).

As noted above, the HSB Appeal sought only to appeal orders dated June 11, 2020, and June 26, 2020. Holmes’ Cross-Appeal, however, seeks not only to appeal the 2020 orders, but to also appeal orders entered in 2019 and 2017. None of the 2019 and 2017 orders were part of HSB’s Appeal and thus were not before the Court of Appeals at the time Holmes filed her Notice of Cross-Appeal. If Holmes wanted to appeal the 2019 and 2017 orders, she would need to appeal those orders specifically. She did not do so. While Holmes *could*—and did—institute a cross-appeal of the 2020 Orders by filing a notice of cross-appeal within five days of HSB’s Appeal, she could *not* use the Cross-Appeal to appeal orders that were not included in HSB’s Appeal. Indeed, Holmes filed her Cross-Appeal over a year after the lower court entered the 2019 order, and over *two years* after the circuit court entered the 2017 orders. There is simply no argument that her appeal is timely as to these orders. Because Holmes’ Cross-Appeal was untimely as to the 2019 and 2017 orders, the Court of Appeals lacked subject matter jurisdiction and properly dismissed Holmes’ appeal as to those orders. It is settled law that a court may raise issues concerning subject matter jurisdiction *sua sponte*, which is what the Court of Appeals did in the underlying appeal. Accordingly, Holmes has failed to demonstrate that the Court of Appeals committed any error of law when it dismissed Holmes’ Cross-Appeal as to all orders except the 2020 orders.<sup>3</sup>

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<sup>3</sup> Moreover, and as noted in HSB’s Counter-Statement of the Case, the Court of Appeals would have been justified in dismissing Holmes’ Cross-Appeal in its entirety because Holmes filed her Initial Brief beyond the thirty-day time limit. See Rule 208(a), SCACR. Indeed, the SCACR provide that the clerk of court *must* dismiss Holmes’ Cross-Appeal in its entirety due to her failure to file her Initial Brief within the time limits prescribed there. Rule 208(a)(4) (“Upon the failure of an appellant to file and serve his brief within the time prescribed, the clerk of the appellate court *shall* sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260.” (emphasis added)).

**II. The Court of Appeals properly treated Holmes' motion as a petition for rehearing.**

Holmes appears to argue that the Court of Appeals incorrectly treated her motion as a petition for rehearing. The SCACR, however, compelled the Court of Appeals to treat Holmes' motion as a petition for rehearing. In fact, Rule 240(j) explicitly provides that reviews of orders issued by an individual judge or justice *must* be done by a petition for rehearing. Rule 240(j), SCACR. The SCACR sets forth requirements for petitions for rehearing in Rule 221, and expressly provides that a petition “shall be in accordance with Rule 240, *and shall state with particularity the points supposed to have been overlooked or misapprehended by the court.*” Rule 221(a) (emphasis added). This is the precise standard the panel of three judges that considered Holmes' petition referenced in their order denying Holmes' petition for rehearing. There is no authority stating that consideration of a motion made under Rule 240(j), SCACR, or petition for rehearing pursuant to Rule 221(a), SCACR, is subject to de novo review. Tellingly, Holmes herself cannot point to any authority that provides that such a motion or petition is subject to de novo review. Instead, Holmes was required to identify “the points supposed to have been overlooked or misapprehended” by the Court of Appeals. Rule 221(a), SCACR. Having failed to do so, the Court of Appeals properly denied Holmes' petition for rehearing.

**III. Holmes has failed to set forth any fact demonstrating that the panel of judges that reviewed the February 4, 2021 order was improper.**

Holmes argues that the panel of judges who reviewed the Court of Appeals' February 4, 2021 order should not have included the judge who issued the order in question. In support of Holmes' argument, she cites to a variety of cases that generally indicate that judges should recuse themselves in proceedings where their impartiality “might reasonably be questioned,” and which

point to situations where federal appellate judges have recused themselves from determining appeals in cases or issues tried by them. *See* Petition p.7. Here, however, Holmes fails to set forth *any* reasonable factual basis for doubting the partiality of the judge who issued the February 4, 2021 order. Because Holmes has failed to adduce any reasonable basis for questioning the impartiality of the judge who issued the February 4, 2021 order, the Court should disregard her arguments.

**CONCLUSION**

For the foregoing reasons, HSB respectfully requests that the Court decline to grant Holmes' Petition for Writ of Certiorari.

Respectfully submitted,



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