

We grant the State's petition for original jurisdiction and clarify our prior order. This Court is well aware that PCR actions are civil actions. As such, we intended for PCR actions to be included in the prohibition against Respondent proceeding *pro se* as a plaintiff in civil actions. Because PCR actions are generally commenced *pro se*, we clarify that Respondent may file an initial PCR application *pro se*. However, Respondent is prohibited from proceeding *pro se* any further than filing the initial PCR application.

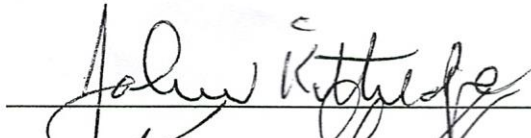
Additionally, we note Respondent's numerous filings with unrelated discussions and appellate case numbers unnecessarily complicate this Court's records and usurp the time of the Court and its staff in attempting to address the issues raised by Respondent. Accordingly, we instruct Respondent that any communication with this Court, *pro se* or otherwise, must include the appropriate appellate court case number, if one has been assigned, and include only arguments that pertain to that case, without extraneous commentary on unrelated topics or unrelated cases. We direct the Clerk of Court not to accept any filings that do not comply with these requirements.


The remainder of the State's requests and Respondent's request to lift the filing restrictions are denied.

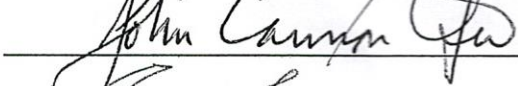
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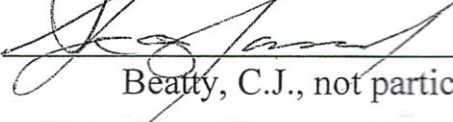
Oct 20 2021

SC Court of Appeals



J.


J.


J.


J.
Beatty, C.J., not participating

Columbia, South Carolina

September 20, 2019

cc:

Alan McCrory Wilson, Esquire
Lindsey Ann McCallister, Esquire
Marie Assa'ad-Faltas

EXHIBIT
No. 21-b

Oct 20 2021

SC Court of Appeals

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Trey Williams, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2016-001553

EXHIBIT

No. 22

Appeal From York County
John C. Hayes, III, Trial Judge
Alison Renee Lee, PCR Court Judge

Unpublished Opinion No. 2019-UP-297
Submitted June 1, 2019 – Filed August 21, 2019

AFFIRMED

Attorney General Alan McCrory Wilson and Assistant
Attorney General Janell Gregory, both of Columbia, for
Petitioner.

Trey Williams, pro se.

PER CURIAM: The State appeals the post-conviction relief (PCR) court's order granting Trey Williams relief, arguing the PCR court erred by finding (1) Williams did not validly waive his right to counsel and (2) Williams's appellate counsel was

ineffective in failing to raise his waiver of counsel as an issue on direct appeal. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to Issue 1: *Mangal v. State*, 421 S.C. 85, 91, 805 S.E.2d 568, 571 (2017) ("Our standard of review in PCR cases depends on the specific issue before us."); *id.* ("We defer to a PCR court's findings of fact and will uphold them if there is any evidence in the record to support them."); *id.* ("We do not defer to a PCR court's rulings on questions of law."); *Osbey v. State*, 425 S.C. 615, 618, 825 S.E.2d 48, 50 (2019) ("A defendant in a criminal case 'has the right to the assistance of counsel.'" (quoting *State v. Justus*, 392 S.C. 416, 419, 709 S.E.2d 668, 670 (2011))); *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 491 (2018) ("In *Faretta*,^[1] the United States Supreme Court held that criminal defendants [also] have a fundamental right to self-representation under the Sixth Amendment."); *Von Moltke v. Gillies*, 332 U.S. 708, 722 (1948) ("It is the solemn duty of a [court] before whom a defendant appears without counsel to make a thorough inquiry and to take all steps necessary to [e]nsure the fullest protection of this constitutional right at every stage of the proceedings."); *id.* at 724 ("A [court] can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered."); *Patterson v. Illinois*, 487 U.S. 285, 298 (1988) ("[R]ecognizing the enormous importance and role that an attorney plays at a criminal trial, we have imposed the most rigorous restrictions on the information that must be conveyed to a defendant, and the procedures that must be observed, before permitting him to waive his right to counsel at trial."); *Iowa v. Tovar*, 541 U.S. 77, 88-89 (2004) ("As to waiver of trial counsel, we have said that before a defendant may be allowed to proceed *pro se*, he must be warned specifically of the hazards ahead."); *State v. Bryant*, 383 S.C. 410, 416, 680 S.E.2d 11, 14 (Ct. App. 2009) (finding the probation revocation court's general warnings "did not expressly address the dangers and disadvantages of appearing *pro se* as required by" *Faretta*); *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) ("To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. In the absence of a specific inquiry by the trial [court] addressing the disadvantages of a *pro se* defense as required by the second *Faretta* prong, this [c]ourt will look to the record to determine whether [the applicant] had sufficient background or was apprised of his rights by some other source."); *Gardner v. State*, 351 S.C. 407, 412-13, 570 S.E.2d 184, 186-87 (2002) (listing factors a court may consider when determining the sufficiency of a defendant's background); *id.* at

¹ *Faretta v. California*, 422 U.S. 806, 835 (1975).

412, 570 S.E.2d at 186 ("In a PCR action, if the record fails to demonstrate the [applicant] made an informed choice to proceed *pro se*, with 'eyes open,' then the [applicant] did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial.").

As to Issue 2: *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) ("A defendant is entitled to effective assistance of appellate counsel."); *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) ("Generally, in analyzing a claim of ineffective assistance of appellate counsel, this [c]ourt applies the *Strickland*² test just as it would when analyzing a claim of ineffective assistance of trial counsel."); *id.* ("Thus, . . . we ask 1) whether appellate counsel's performance was deficient, and 2) whether [the defendant] was prejudiced by appellate counsel's deficient performance."); *Smith v. Robbins*, 528 U.S. 259, 288 (2000) ("Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986))); *State v. Thompson*, 355 S.C. 255, 261, 584 S.E.2d 131, 134 (Ct. App. 2003) ("The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is *per se* reversible error.").

AFFIRMED.³

LOCKEMY, C.J., and SHORT and MCDONALD, JJ., concur.

² *Strickland v. Washington*, 466 U.S. 668 (1984).

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

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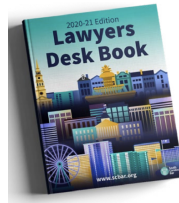
Law School: University of South Carolina School of Law, 1977

Bar Admission: 05/11/1977

Member Class: Regular Member

Member Status: Not Good Standing (Disbarred)

Administrative Actions: 03/25/1996: DISBARRED
321 S.C. 440, 468 S.E.2d 869



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LOCATION

107 Manly St.

Greenville, SC 29601



468 S.E.2d 869 (1996)**In the Matter of Kathleen P. JENNINGS, Respondent.****RECEIVED****Oct 20 2021****SC Court of Appeals**No. 24400.**Supreme Court of South Carolina.**

Heard February 7, 1996.

Decided March 25, 1996.

Rehearing Denied April 18, 1996.

EXHIBIT**No. 24**

870 *870 Attorney General Charles Molony Condon, and Senior Assistant Attorney General James G. Bogle, Jr., Columbia, for complainant.

John P. Freeman and Nathan M. Crystal, Columbia, for respondent.

PER CURIAM:

871 This is an attorney disciplinary matter. Two Panel members recommended disbarment *871 and one recommended an indefinite suspension. The Panel did not find misconduct for two allegations in the complaint. The Executive Committee adopted the Panel Report but found misconduct regarding all of the allegations. By a vote of 8 to 0, the Executive Committee recommended disbarment.^[1] We find respondent's misconduct warrants disbarment.

DISCUSSION***Improper billing***

There are several allegations involving improper billing. Beginning in 1989, respondent began to send some of her work to an attorney, Tom Bruce. Bruce, a full-time employee of Legal Services in Greenville, did this work in his spare time to supplement his income. Respondent increased the number of hours or most often simply doubled the time spent by Bruce and billed these hours to her clients. For example, Bruce would work on a brief for two hours and respondent would bill a client for four hours.

Bruce submitted written bills with his work. Respondent wrote notes to her bookkeeper on these bills regarding how to bill for the time: "enter for 3 hours for me as my work" (Ex. C-(f)); "Pay Tom and bill under my name—double time to allow for me" (Ex. C-(h) and (r)); "Double his time as for me— pay him his actual time" (Ex. C-(z)); "Enter for me doubled time" (Ex. C-(k)); "double to me" (Ex. C-(aa)); "post as if my time and double time to cover time I spent w/Tom" (Ex. C-(cc)); "double for me" (Ex. C-(gg)); "double this for KPJ" (ex. C-(jj)); and "double to include me" (Ex. C-(mm)). In the record, there are 39 cases which reflect this billing practice.

Respondent testified she typically doubled the time which Bruce spent on a file to include her time for supervising and directing Bruce and finalizing the work. She also testified she frequently called Bruce from her home and, since she did not keep track of this time, she simply doubled his time as a rule of thumb. There are two examples in the record when respondent doubled his hours from 7 to 14 hours and from 4 to 8 hours. Bruce testified respondent sometimes called him at home but the calls rarely lasted longer than 15 minutes.

We find respondent's repeated practice of increasing or doubling Bruce's hours when billing without justification amounts to misconduct. Like the Panel, we are convinced respondent did not spend even close to the amount of time she billed on these cases.^[2] Further, guessing or using a fixed rule to double time is not a proper way to keep track of hours which are billed to clients.

Destruction of Bruce Bills

The Board proceeded with copies of the Bruce bills obtained from Rhonda Boykin, an ex-employee of respondent's. The original bills were never located. The Panel and Executive Committee found respondent had destroyed the Bruce bills on February 8, 1994. Respondent contends the Panel and Executive Committee erred in making this finding. In its report, the Panel carefully weighed the evidence on this allegation and, after an in-depth discussion, concluded there was clear and convincing evidence respondent had destroyed the bills. We agree.

872 The Panel's findings are entitled to great weight. *Matter of Lake*, 269 S.C. 170, 236 S.E.2d 812 (1977). The Panel's finding and the concurrence of the full Board are advisory only and not binding upon the Court. These are, however, entitled to great respect, particularly when the transcript is lengthy and the inferences to be drawn from *872 the testimony depend largely on the credibility of the witnesses which, of course, is assessed best by personal observation at the hearing. *In re Bloom*, 265 S.C. 86, 217 S.E.2d 143 (1975). See also *In re Friday*, 263 S.C. 156, 208 S.E.2d 535 (1974).

The following evidence was considered. After learning there was an investigation regarding the bills, Rhonda testified she copied the bills with Denise Newlan for fear something would happen to them. Newlan corroborated this. Further, Rhonda testified she gave respondent the bills on February 8th and saw respondent with a torn bill in her hand. Thereafter, she testified she heard tearing for 30-45 minutes coming from respondent's office. There was no evidence Rhonda had a motive or reason to he.

Respondent gave Rhonda a \$10,000 raise effective March 1, 1994. This reflected a 50% pay increase. Respondent contends this raise was for an increase in the workload because a paralegal, Denise Newlan, had quit. However, Rhonda was a secretary/bookkeeper and could not perform paralegal work. The pay raise coincided with a meeting which Rhonda testified took place between Rhonda, respondent, and an attorney. Rhonda had been urged to see this attorney by respondent. During her meeting with the attorney, Rhonda testified she told him about respondent's destruction of the Bruce bills. The next day respondent met with the attorney and Rhonda and respondent pled with Rhonda to reconsider what she had perceived to be the destruction of the bills. Respondent denies this meeting ever took place.

Respondent contends an ex-employee, Bobbie Langley, took the bills when she was fired nine month earlier in May 1993. However, both Rhonda and Denise Newlan testified they saw the bills and copied them on February 4, 1994. Respondent contends Langley could have gained access to her office at a later time and stolen the bills as part of an ill-will scheme against respondent. Respondent filed a police report on February 8, 1994, suggesting Langley had taken these files with her when she left in May 1993. Other than respondent's bare allegations, there is no evidence to support this theory.

Respondent has the burden of showing the recommendation of the Panel and Executive Committee should not be followed by the Court. *In re Pride*, 276 S.C. 363, 278 S.E.2d 774 (1981). Here, credibility of the witnesses is crucial in determining whether respondent destroyed the bills. The Panel was in a much better position to review credibility of the witnesses than this Court is on a cold record.^[3] We conclude there is clear and convincing evidence to support a finding respondent destroyed the Bruce bills.

Miscellaneous Billing

Respondent testified she would randomly pick a client to bill the Lexis subscription rate of \$26.25 each month. She testified she billed this fee as an "overhead item." Respondent also testified Lexis was *not* used to research for these clients. Clearly, respondent should not have charged an overhead item to a client; particularly an overhead item from which the client received absolutely no benefit. Respondent's billing practice relieves her of the necessity of maintaining her office from her contingent fee, and the charges to the account by respondent constitute a fee. *Kentucky Bar Ass'n v. Graves*, 556 S.W.2d 890, 891 (Ky.1977).

Respondent also billed clients \$50.00 for the \$35.00 process service fee. She justified this practice by stating she reviewed the process. Respondent also argues both of these billing practices were fair because she did not always charge her clients for other items. She points to several "No Charge" items on clients' bills. We do not think respondent can justify this billing practice by stating in the long run she did not overcharge her clients and, therefore, they were not financially harmed by it. We find respondent improperly charged these items to her clients.

873 *873 Respondent was also accused of doubling a court reporter's bill. Although the Panel failed to find respondent had billed a client \$136.00 for a \$68.00 court reporter's bill, we agree the Executive Committee's finding of misconduct. Respondent testified she did not know why the bill had been doubled, but speculated she charged for two transcripts. There was a note written in respondent's hand writing on the reporter's bill which stated: "please pay this but bill client's account \$136.00." We agree there is clear and convincing evidence to support a finding respondent improperly charged her client twice the amount of the bill.

Signing satisfaction of judgment

Respondent represented Diane James in a proceeding seeking to increase alimony. When James initially entered into the fee agreement with respondent, James' father, Robert Roberts, signed as guarantor.

James's ex-husband, Gary Rank, owed Roberts \$6,500 from a loan which Rank had failed to repay. An Ohio attorney obtained a judgment against Rank for Roberts. Thereafter, a check for \$8,192.61 as satisfaction of the judgment was sent to respondent for Roberts. Respondent deposited this into her account on December 23, 1991. Respondent, however, did not take steps to satisfy the judgment. In October 1992, Rank's attorney inquired as to why respondent had failed to satisfy the judgment. Respondent immediately signed Roberts's name to the satisfaction of judgment form and filed it with the court. Respondent also signed the form as a witness and had her paralegal notarize the signatures.

Respondent attempted to justify her actions by stating Roberts had signed the fee agreement as guarantor. She contends the fee agreement was a power of attorney which gave respondent the authority to sign Roberts's name. Respondent herself repeatedly denied Roberts was her client and, furthermore, respondent did not follow the formalities which a power of attorney requires. Respondent also claims in the end Roberts ratified his signature and no one was damaged by her action. Even so, respondent's actions were improper under the Rules of Professional Conduct—this is not a civil action between the parties involved.

"The forgery of a signature on a court document is a fraud upon the court; we cannot conceive of any justification for such conduct." *In the Matter of McGuinn*, 272 S.C. 366, 252 S.E.2d 122 (1979). We find respondent's signing and notarizing Roberts's name was misconduct.

Candor before the family court

Respondent represented Deanna Morse in an action seeking child support. However, paternity had not yet been determined. An initial temporary hearing was held before Judge Johnson on March 23, 1993. Since paternity had not been established and the defendant had not answered and was not present at the hearing, Judge Johnson refused to order child support. Respondent asked if she could request another temporary hearing after the expiration of 30 days. Judge Johnson told her she could take it up with Judge Kittredge, the administrative judge. During the second temporary hearing, respondent did not reveal that she had been before Judge Johnson the month before for a temporary hearing on the same issue. She stated she had never been denied child support even when paternity had not been established. She acknowledged the prior hearing only after Judge Kittredge asked her about the notes which Judge Johnson had made in the file during the prior hearing.

Respondent basically contends there was a misunderstanding about what exactly she was to take up with Judge Kittredge (i.e. the issue of whether to be allowed a second hearing or actually having a second hearing). Furthermore,

respondent contends she thought Judge Johnson declined to rule on the child support issue; rather than declining to award child support. We think respondent was well aware of what was happening. The clerk of court testified respondent did not request a hearing in front of the administrative judge; it was just coincidence respondent was
874 scheduled to appear before Judge *874 Kittredge. The Panel failed to find misconduct by clear and convincing evidence. The Executive Committee, however, found misconduct. We agree with the Executive Committee and find respondent acted improperly in this matter.

Family court order and lien for attorney's fees

Respondent represented Linda Abbott Bennett for approximately four months in 1992. A temporary hearing was held before Judge Spruill. Judge Spruill requested that respondent prepare an order reflecting what he had decided at the hearing. A proposed order was sent to Judge Spruill for his signature. The proposed order was not sent to opposing counsel. The order was signed and afterwards opposing counsel moved for reconsideration on the ground the order contradicted what was decided at the hearing. Following a hearing on the motion, a new order was prepared and subsequently signed. Although there is no rule which requires respondent to send a proposed order to opposing counsel and the judge did not order respondent to do so, respondent was guilty of misconduct for preparing an order which misrepresented the judge's decisions.^[4]

Respondent also filed a lien for unpaid fees against Bennett's property 17 days after filing a motion to be relieved as her counsel and on the same day the order granting that motion was signed. Respondent filed the lien pursuant to S.C.Code Ann. § 20-3-145 (1985).^[5] This section is inapplicable because there was no order awarding respondent attorney's fees.^[6] Respondent also charged Bennett for filing the lien which she justifies by claiming her retainer agreement provides for costs in the collection of fees. When Bennett sold her house, the closing attorney offered to place the amount in dispute into escrow until the fee dispute was resolved, but respondent refused. The Fee Resolution Board ultimately resolved this dispute by decreasing respondent's bill. The Panel and Executive Committee found respondent acted improperly by filing this lien. We agree.

Investigation by Attorney General's Office

Respondent contends the Attorney General's Office violated her rights to a fair hearing through improper investigation. Pursuant to ¶ 24(C), Rule 413, SCACR: "No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in the miscarriage of justice...." It is unnecessary for us to decide whether the investigation was improper because respondent has not pointed to any prejudice.

We find respondent violated Rule 407, SCACR, by committing the following misconduct: dishonesty, deceit, and misrepresentation regarding the billing of several of her clients (Rule 8.4(d)); lack of candor toward a tribunal (Rules 3.3(a)(1) and 8.4(d)); billing time which respondent did not spend on a case (Rule 1.5(a)(1)); billing clients for services not actually rendered and overhead costs or increasing the costs (Rule 8.4(d)); destroying documents regarding the improper billing (Rules 8.4(d) and 8.4(e)); forging a signature on a satisfaction of judgment (Rule 8.4); misleading a
875 family court judge (Rules 8.4(d) and 3.3); and improperly filing a lien *875 for attorney's fees (Rules 3.4 and 8.4).^[7]

Respondent admits most of the conduct of which she is accused. However, she has explanations and excuses for her actions which she contends are not misconduct. We, however, find there is clear and convincing evidence to support the findings of misconduct.

"The purpose to be served by removing from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to the office of an attorney is to protect the public and those charged with the administration of justice." *In the Matter of Baldwin*, 278 S.C. 292, 294 S.E.2d 790, 791 (1982), (quoting *In the Matter of Kennedy*, 254 S.C. 463, 176 S.E.2d 125, 126 (1970)).

It is our opinion that respondent's misconduct warrants disbarment. It is therefore ordered that respondent shall be disbarred from the practice of law in this state. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Paragraph 30 of Rule 413, SCACR, and shall surrender her certificate of admission to the Clerk of Court.

DISBARRED.

[1] One member did not participate.

[2] There are several examples in the exhibits of Bruce's work hardly having been revised prior to being submitted under respondent's name. By everyone's account, respondent did not have to change much of Bruce's work as he did quality work. Her minor revisions did not justify billing twice the amount of time which he had expended.

[3] The Panel noted "it is based upon our observation of the demeanor, the candor, and the forth-rightness of each witness which are most difficult to quantify or describe."

[4] We note the Bench and Bar were cautioned to strictly observe the Canons governing judicial and attorney conduct with regard to ex parte contacts as they relate to maintaining the appearance of propriety and to comply with both the letter and the spirit of Opinion No. 2-1988 of the Advisory Committee on Standards of Judicial Conduct in Burgess v. Stern, 311 S.C. 326, 428 S.E.2d 880 (1993).

[5] This section provides: "In any divorce action any attorney fee awarded by the court shall constitute a lien on any property owned by the person ordered to pay the attorney fee and such attorney fee shall be paid to the estate of the person entitled to receive it under the order if such person dies during the pendency of the divorce action."

[6] The Court of Appeals recently held another lien filed by respondent under this section was invalid. Huff v. Jennings, 459 S.E.2d 886 (Ct.App. 1995).

[7] Some of respondent's conduct occurred prior to the September 1, 1990, effective date of Rule 407, SCACR, Rules of Professional Conduct. Therefore, prior Rule 32, Sup.Ct. Rules, Code of Professional Responsibility, applies to some misconduct.

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Linda Lundstrom, Inc., Respondent,

v.

Kathleen Jennings DBA The Southern Cottage,
Appellant.

EXHIBIT

No. 25

Appeal From Greenville County
Joseph J. Watson , Circuit Court Judge

Unpublished Opinion No. 2005-UP-209
Submitted March 1, 2005 – Filed March 21, 2005

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Oct 20 2021

SC Court of Appeals

AFFIRMED

Kathleen Jennings, of Greenville, for Appellant.

Leo A. Dryer, Jr., of Columbia, for Respondent.

PER CURIAM: Katheen Jennings appeals an order by the trial judge denying her request for relief from judgment pursuant to Rule 60(b), SCRCP. We affirm.^[1]

FACTS

In October of 2000, Linda Lundstrom, Inc. (Lundstrom), filed suit against Kathleen Jennings, doing business as The Southern Cottage at the Falls, Inc. (Southern Cottage), seeking payment for merchandise delivered to Jennings. Jennings filed an answer denying Lundstrom's allegations and asserting a counterclaim for repayment and costs associated with returned merchandise. According to Lundstrom, it served requests for admission on Jennings on February 14, 2001, for which it did not receive a timely response. Subsequently, Lundstrom filed a motion to strike Jennings' answer and a motion for summary judgment. Jennings retained counsel and filed a motion to dismiss claiming Southern Cottage, a South Carolina Corporation, not Jennings, placed the orders in question with Lundstrom. In addition, Southern Cottage filed a motion to intervene in the matter, and Jennings filed a motion to amend her answer to include these arguments as a defense.

The trial judge issued an order on October 16, 2001, deeming Lundstrom's requests for admission admitted and granting Lundstrom's motion for summary judgment. Jennings filed a motion to reconsider, arguing the trial judge should have recused himself. In Jennings' memorandum in support of her motion, she stated she asked her attorney to file a motion requesting the judge to recuse himself, but her attorney did not. In addition, Jennings argued Lundstrom failed to provide her with sufficient discovery responses and she was not the correct defendant to be sued. In an order signed on November 6, 2001, the trial judge denied Jennings' motion to reconsider. Jennings did not file an appeal.

On January 8, 2002, Jennings filed a renewed motion to reconsider, to vacate the judgment, and to have the trial judge recused. In an order dated January 9, 2002, the trial judge again denied Jennings' requests for reconsideration and for recusal, but the judge allowed her to proceed with a motion to vacate the judgment pursuant to Rule 60(b), SCRPC. Jennings filed another motion, entitled "Amended Renewed Motion for Reconsideration, Motion to Vacate Judgment, Motion to Recuse, and Motion for Leave to Withdraw Admissions and Memorandum in Support." This motion was treated as a Rule 60(b) motion to vacate. Jennings argued in the motion that she did not receive Lundstrom's requests for admission until after it filed its motion to strike and its motion for summary judgment. The trial judge conducted a hearing on the Rule 60(b) motion and subsequently issued an order dated February 22, 2002, denying Jennings' request. The trial judge determined he addressed, in his previous order, Jennings' arguments that she was not the correct defendant and that she was due credits for returned merchandise. In addition, the trial judge reasoned Jennings' argument that she did not receive the requests for admission was without merit because the rule regarding requests for admission does not require certified mailing and Jennings did not previously assert this argument. Jennings appealed the denial of her motion to vacate.

STANDARD OF REVIEW

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. Our standard of review, therefore, is limited to determining whether there was an abuse of discretion." **Raby Constr., L.L.P. v. Orr**, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004) (citation omitted). "An abuse of discretion arises where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." **Tri-County Ice & Fuel Co. v. Palmetto Ice Co.**, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

LAW/ANALYSIS

I. Withdrawal or Amendment of Requests for Admission

Jennings argues the trial judge erred in failing to allow her to withdraw or amend her requests for admission. We disagree.

We find this issue not properly preserved for our review on appeal. An issue must be ruled upon by the trial judge or raised by way of a Rule 59(e), SCRPC motion to be preserved for appellate review. **Noisette v. Ismail**, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991). Although Jennings asserted this argument in her Rule 60(b) motion, the trial judge's order does not specifically address this issue. In addition, Jennings did not assert this argument in a Rule 59(e), SCRPC motion to alter or amend the trial judge's order denying her request for relief from judgment. Because Jennings raises the issue regarding the withdrawal or amendment of her requests for admission for the first time in her Rule 60(b) motion, we find this issue not preserved for our review.

II. Individual Liability for Corporate Debts

Jennings maintains the trial judge erred in entering summary judgment against her for liabilities incurred by Southern Cottage. Specifically, Jennings contends that Southern Cottage is a registered corporation in South Carolina and this corporation, not Jennings, placed the order for the merchandise for which Lundstrom seeks payment. Therefore, Jennings argues absent an assertion that Southern Cottage, as a corporate entity, should be disregarded, she, as a shareholder, cannot be held personally liable for its obligations.

Without addressing the merits of Jennings' argument, we find her presentment of this argument in a Rule 60(b), SCRPC motion for relief from judgment improper. "Relief from judgment under Rule 60 should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion." **Smith Co. of Greenville, Inc. v. Hayes**, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993).

Jennings raised this argument before the trial judge in both her amended answer and her motion to dismiss prior to the trial judge's order granting Lundstrom summary judgment. Although the trial judge did not specifically rule on this issue in his order granting summary judgment, Jennings asserted this argument in both of her Rule 59(e), SCRCP motions, which the trial judge denied. Jennings, however, did not subsequently appeal either of the trial judge's orders denying her motions to reconsider. Instead, Jennings filed a Rule 60(b) motion, which is not a substitute for an appeal. Therefore, we find Jennings' assertion of this issue pursuant to a Rule 60(b) motion improper.

III. Rule 60(b) Motion

Jennings argues the trial judge erred in denying her request for relief from the order granting Lundstrom summary judgment. Jennings presents two arguments in support of her request for relief from judgment. First, Jennings asserts the trial judge based his order upon the mistaken belief that Lundstrom delivered requests for admission to Jennings prior to the due date for such requests. Second, Jennings' failure to answer Lundstrom's requests constituted excusable neglect because Jennings should not be required to timely answer requests for admission she did not receive. In addition, Jennings contends she has several meritorious defenses she can assert should the court grant her motion.

"The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). Rule 60(b) provides in pertinent part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

"In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." Micronics, Inc. v. South Carolina Dep't of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001).

In the present case, Jennings seeks relief from a judgment based upon requests to admit which were deemed admitted. The South Carolina Rules of Civil Procedure provide that unless a party served requests to admit answers and denies the request within thirty days, the matters in the requests are deemed admitted. Rule 36(a), SCRCP. The rule further provides that matters admitted pursuant to the rule are conclusively established unless a withdrawal or amendment of the admission is allowed by the trial judge. Rule 36(b), SCRCP.

We find the trial judge did not abuse his discretion in denying Jennings' request for relief from judgment because Jennings did not meet her burden of proving any mistake or excusable neglect. The record indicates Jennings knew she did not timely answer Lundstrom's requests for admission before the trial judge granted summary judgment to Lundstrom. Jennings admitted in an affidavit that she learned of the requests to admit when she received Lundstrom's motion for summary judgment based upon Jennings' failure to answer the requests to admit on April 9, 2001. Nevertheless, Jennings still failed to answer the requests to admit until August 15, 2001. In a letter to counsel for Lundstrom, dated August 15, 2001, Jennings' counsel wrote: "Enclosed is the Defendant's Answers to Plaintiff's Request for Admissions and Verification. I apologize for the delay in sending the answers to you." The trial judge addressed this failure in the order granting Lundstrom's motion for summary judgment, stating: "The Court is first required to address Plaintiff's (earlier) Motion; Plaintiff's Request to Admit are deemed admitted, and this Court need inquire no further; the Plaintiff is entitled to the relief of Summary Judgment."

The record does not contain any indication that Jennings filed a motion to withdraw the deemed admissions or to amend the deemed admissions. In fact, in Jennings' subsequent motions to reconsider, she does not assert any error by the trial judge in regard to this issue. Because Jennings failed to answer the requests to admit within thirty days of service, the matters contained therein were deemed admitted pursuant to Rule 36, SCRCP. Accordingly, the trial judge correctly granted summary judgment to Lundstrom. Therefore, there was no evidence of mistake or excusable neglect and we find the trial judge did not abuse his discretion in denying Jennings' request for relief from judgment.

IV. Recusal

Jennings argues the trial judge erred in refusing to recuse himself from the case due to a negative and hostile relationship with her.

We find this issue not preserved for our review. In order for an issue to be preserved for appellate review, with few exceptions, it must be raised and ruled upon by the trial judge. **Lucas v. Rawl Family Ltd. P'ship**, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004). When a trial judge does not address the specific argument raised by the an appellant and the appellant does not make a motion to alter or amend pursuant to Rule 59(e), SCRCP, to obtain a ruling on the argument, the appellate court cannot consider the argument on appeal. **Noisette v. Ismail**, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991).

In the case at bar, Jennings argued this issue in her motion for relief from judgment, but the trial judge did not rule upon this issue in his order. In addition, Jennings did not file a motion pursuant to Rule 59(e), SCRCP to attempt to obtain a ruling on this issue. Therefore, we find this argument not preserved for our review.

CONCLUSION

We find Jennings' arguments that the trial judge erred in refusing to allow her to withdraw or amend her requests for admission and in refusing to recuse himself from this action not preserved for our review. In addition, Jennings' claim that she cannot be held personally liable for obligations incurred by Southern Cottage is not properly before this court in this appeal from the trial judge's denial of request for relief from judgment. Finally, we find the trial judge did not abuse his discretion in denying Jennings' request for relief from judgment. Accordingly, the decision of the trial judge is

AFFIRMED.

ANDERSON, BEATTY, and SHORT, JJ., concur.

[1] Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

RECEIVED

Oct 20 2021

Blue Ridge Electric Cooperative, Inc., Petitioner,

SC Court of Appeals

v.

Kathleen J. Gresham, Respondent.

Appellate Case No. 2015-001836

EXHIBIT

No. 26

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Greenville County
R. Lawton McIntosh, Circuit Court Judge

Memorandum Opinion No. 2016-MO-032
Submitted November 15, 2016 – Filed December 7, 2016

**CERTIORARI DISMISSED AS IMPROVIDENTLY
GRANTED**

Larry C. Brandt, of Larry C. Brandt, P.A., of Walhalla;
Steven W. Hamm and Jo Anne Wessinger Hill, both of
Richardson Plowden & Robinson, P.A., of Columbia; all
for Petitioner.

Kathleen Jennings Gresham, of Landrum, Pro Se
Respondent.

PER CURIAM: We granted Blue Ridge Electric Cooperative, Inc.'s petition for a writ of certiorari to review the decision of the Court of Appeals in *Blue Ridge Elec. Coop. v. Gresham*, Op. No. 2015-UP-031 (S.C. Ct. App. filed Jan. 14, 2015). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

**PLEICONES, C.J., BEATTY, HEARN and FEW, JJ., concur.
KITTREDGE, J., not participating.**

Civil Rights History Project
Interview completed by the Southern Oral History Program
under contract to the
Smithsonian Institution's National Museum of African American History & Culture
and the Library of Congress, 2011

RECEIVED**Oct 20 2021****SC Court of Appeals**

Interviewee: Judge Matthew J. Perry, Jr.
Interview Date: June 7, 2011
Location: His judicial chambers in the Matthew J. Perry, Jr. Federal Courthouse, Columbia, South Carolina
Interviewer: Joseph Mosnier, Ph.D.
Videographer: John Bishop
Length: 55:52

John Bishop: Okay, we're rolling. Could we have just fifteen seconds of room tone?
[Pause] Okay, thank you.

Joe Mosnier: Today is Tuesday, the seventh of June 2011. My name is Joe Mosnier of the Southern Oral History Program at the University of North Carolina at Chapel Hill. I am with videographer John Bishop, and we are in Columbia, South Carolina, at the, um, at the federal courthouse named for our interviewee today, Judge Matthew J. Perry, Jr. We are here to do an oral history interview for the Civil Rights History Project, which is a joint undertaking of the Library of Congress and the Smithsonian's National Museum of African American History and Culture.

Judge Perry, it's a great honor and privilege to be with you this morning. I know you have a busy trial schedule today, so thank you.

Matthew Perry: Thank you.

JM: Thank you for taking time here this morning, and we will, we will honor your calendar and the need to be fairly, um, fairly prompt and quick in our process here. Let me ask you to start today, if I could, um, with just a description of, um, of the circumstances in the late '40s, 1948, when you entered law school, and the context for the new law school, and what you encountered, uh, in that newly, recently created law school.

MP: Well, if I might, um, uh, take you back, uh, before the beginning of the law school, uh, you may know – uh, or if not, I'll tell you – that I am a veteran of World War II. I was born and reared here in Columbia. Um, I was born in 1921. And, um, I, um, was a student at, uh, at South Carolina State College when, uh, when the Japanese attacked Pearl Harbor. Um, uh, a national draft occurred, and I was, of course, a young person who fit within the, uh, age brackets and I received my notice, my draft notice, and, um, I reported for duty – well, the notice came in December of 19--, late November of 19--, uh, 1942, and, uh, I reported for duty, uh, near the first of, uh, January, 1943. Uh, I served in a segregated Army outfit, a quartermaster outfit. We did our basic training at, uh, at Camp Van Dorn, Mississippi, and traveled and did our maneuvers in that area of the country.

And, um, um, I mention this because you, uh, may know that having been born and reared in the Deep South, I, um, was subjected to and was very accustomed, uh, as a, uh, young man growing up, to the requirements of racial segregation. It was widely practiced. It was, uh – uh, there was no question but what we were subjected to the constraints, uh, imposed upon us as a people, uh, through, through the law. Now, [clears throat] uh, I mention that because, you see, having grown up and having, uh, been accustomed to it, why, um, initially as a child, I'm not sure that I fully appreciated – if I appreciated at all – the injustice of it, that anything was wrong with it.

But as I grew and as I developed, uh, and as my horizons expanded, um, as I grew intellectually, I did begin to wonder about the justification for much of what I experienced. [Someone coughs] If you have, uh, seen and read a, uh, a book, uh, that describes my, uh, my, uh, activities in South Carolina [Burke, W. Lewis, and Belinda F. Gergel, Eds. *Matthew J. Perry: The Man, His Times, and His Legacy*. Columbia: University of South Carolina Press, 2004], uh, you will note that they make reference to, to an experience I had when I was in the Armed Services. [5:00]

I was, um, I got a weekend pass – I think it was a weekend pass – uh, at the end of my basic training and was traveling home to Columbia, South Carolina, by train. This was before air travel had, uh, uh, come into existence – or, if so, I knew nothing about it. And, um, uh, riding on the train, of course, we had to sit in, uh, uh, passenger cars reserved for, for members of our own race. And, um, uh, there were just widespread practices everywhere, uh, including at restaurants and, uh, other activities. All right, the train – we had to change trains in Alabama, um, in Birmingham, Alabama. And, of course, uh, my, uh, wait there for my connecting train was something more than two hours. By the way, it was, um, uh, rather inclement weather, damp and everything. And I, um, I was hungry.

Now, they had a terminal restaurant, and, uh, I couldn't go in the restaurant. That didn't bother me, because, you see, I had never been permitted to go into a restaurant that was reserved for white citizens. On the other hand, remember now, I'm now a young person who is in the midst of growth into manhood. And, uh, [clears throat], uh, instead, I had to go to a window, uh, outside the kitchen or adjacent to the kitchen to order my sandwich through the window. Other black soldiers and other black passengers were doing the same thing, had to stand in a line and wait my turn.

Now, looking through into the restaurant, there were – by the way, our nation was already engaged in, uh, war with the Italians, and, um, uh, there were some Italian young persons who had been captured and who were being brought and transported into the United States to be housed in prisoner of war camps, as I later understood – but here were a contingent of, um, of Italian prisoners of war. They were dressed, of course, in their uniforms, and, uh, surely, our own military police were stationed around. But they were in the restaurant and, uh, they were being served. And the young waitresses were treating them with courtesy, and, and, uh, one got the impression that [laughs], that some of them found the young men very attractive, a quite understandable reaction on their part.

But, as I looked and as I contemplated, here I was at that time an American soldier. I was wearing the uniform of my country. I had just gone through basic training. I had been trained to, uh, to go into a matter involving our engagement with the enemy. Um, uh, of course, you know, I had developed a sense of, uh, pride in my status as an American soldier. But here I was, uh, uh, denied a privilege. Um, once again, it was not strange to me, but now, uh, a certain feeling of insult began to develop within me. Uh, the injustice of it all I think became more clear, and I wondered about its justification. I wondered what – if anything – could be done about it. I had not been trained in the law and so, therefore, I hadn't come upon [10:00] any solutions in my own mind.

Uh, I mention that to you because, um, uh, that, uh, experience, um, you know, remains with me. And so, as I continued – by the way, we served in England, France, Belgium, Germany, and we were – we traveled, you know, around the world. After the war, I was discharged in, in, uh, January of 1946, and I returned to my native Columbia, South Carolina. And, uh, now I needed to complete my undergraduate college training, and so I had decided that

I was going to return to my alma mater, South Carolina State College. Uh, I had to return in the fall, beginning September.

But during the spring months, there came to trial, uh, two cases in, uh, in the federal courts here in Columbia. And, uh, a couple of friends and I, also veterans of World War II, um, learned about the fact that these cases were about to be tried. They were getting a great amount of publicity. So, we decided to, uh, come uptown to the court – not this building, of course. The building is now the home of the, uh, United States Bankruptcy Court, around there on, uh, Laurel Street, near Laurel and Assembly. And, uh, that's where the Federal District Court was.

And so, I went in, and, uh, I and others were spectators. And we saw these two cases tried back to back. One of them was, um, uh, the case of a, uh, of a black citizen named George Elmore who, uh, had brought a suit on behalf of himself and others similarly situated against the election officials, uh, of South Carolina, challenging the fact that he and others similarly situated, meaning black Americans, were, uh, were denied the right to vote in the, uh, Democratic primary elections. The Democratic Party of South Carolina and the Democratic Party in other states around the, certainly around the Deep South, operated what were known as white-only primaries. And, um, uh, Mr. Elmore and others were challenging this.

By the way, the United States Supreme Court had already decided a couple of years before that, uh, in a famous case called *Smith versus Allwright* [1944] that the, uh, that practice, as practiced in Texas, was, uh, unlawful, that it was a denial of equal protection and a denial of the rights guaranteed under the Fifteenth Amendment, and so that was the precedent. I did not then know about *Smith versus Allwright*, but I've later learned about its significance. But that was the basis upon which the case was fought in the District Court here in South Carolina.

By the way, the attorneys in that case, um, headed by Thurgood Marshall – uh, I had never seen or heard of Thurgood Marshall before that time. Um, also, Robert Carter was there. Uh, Robert Carter was then a young associate of Thurgood Marshall's, who was either then or later became the Chief Assistant to Thurgood Marshall. The local attorneys were Harold Boulware [Harold R. Boulware, Sr.], a lawyer here in Columbia, uh, and, uh, there were other lawyers who were listed on the brief: Fred Robinson [W.R. Robinson] and, uh, I understand that a Mr. Parker [Esau Parker], who was not present in the courtroom – his name was on the brief. Uh, I believe that Mr. Morgan [Shadrack Morgan] of Orangeburg [South Carolina], who was popularly known as “Squire” Morgan – that was not his real first name, uh, short for “Esquire.”

[Laughs]

In any event, uh, I, uh, witnessed the trial of that case. And, um, um, it, uh – they tried it and, of course, the judge took it under advisement; later decided, of course, in favor of Mr. Elmore and others.

But then, upon the conclusion of that case, the other case was tried. That was the case of, uh, of a young black American named John Wrihten, who had applied for entry as a student in the law school at the University of South Carolina. And, um, uh, Mr. Wrihten, also represented by Thurgood Marshall and others, was suing for the right to, uh, enter the University of South Carolina's law school. Again, um, uh, I was, I was aware that I and other blacks could not attend the University of South Carolina. We, we had a, uh, a black school. Uh, there were other black schools here: Benedict College [Columbia, South Carolina] and Allen University [Columbia, South Carolina] and Claflin [College, Orangeburg, South Carolina], but, uh, South Carolina State College was the only state-supported institution.

By the way, that was not its correct name in the statute. The statutes, uh, defined it or named it the Colored Normal Agricultural and Mechanical College at Orangeburg [Colored Normal Industrial, Agricultural, and Mechanical College of South Carolina], uh, a name that we, that we found distasteful [laughter]. And, of course, popularly we began calling the school South Carolina State College. All right, [clears throat] now –

JB: Could we pause for –?

[Recording stops and then resumes]

JB: We're rolling.

JM: We're back after a very short break. Judge?

MP: All right. [Clears throat] Now, uh, I witnessed the trial of that case, uh, completely and I was certainly impressed by the performance of these very fine lawyers. And, uh, remember now, I'm – as a young person I'm in the stage of developing into manhood, developing intellectually, uh, and chronologically. And so, uh, I had naturally begun to contemplate what my life's work might be. I had already started my undergraduate training. I was about to return to complete my undergraduate college work and I had begun thinking about, "What will I turn to? Will it, uh, be in the business world? Will it, uh, be, uh, in other, other professional callings? How about medicine?" I decided against that.

Uh, but I, uh – the business of wondering about how society might justify the racial practices that I had become increasingly aware of, uh, weighed with me. Uh, could I enter some field or study some field that might better equip me to understand what I was looking at, to understand the reasoning for it, and to perhaps, uh, along with others, try to find some solutions to them? And I think that these were the considerations that prompted me to turn and to decide upon the study of law.

Now, where will I pursue my training? I had, of course, uh, privately decided in my mind that, well, I'll go to Howard University. That was the school that, uh, that I, uh, had heard about. And I knew, I'd learned that the lawyers that I admired so much had gone there. [20:00] And so, I had made that decision.

All right, uh, Judge J. Waties Waring, who had presided over both of these trials, uh, made his decisions, uh, in both instances: He decided in favor of Mr. Elmore and others in the voting rights case, and, um, uh, he decided in favor of the plaintiff in the Wrighten case. Uh, in that case, uh, he decided that South Carolina had to either admit, uh, John Wrighten and others similarly situated to its School of Law at the University of South Carolina *or* provide for him and others similarly situated, uh, a separate [laughs] but substantially equal education in some *other* institution *or* cease to offer a legal education at all. So, those were the three alternatives.

Well, South Carolina decided to, uh, to, uh, open the, uh, very *inadequate*, uh, [law] school at South Carolina State College. I say "the very inadequate," I didn't know *then* that it was – well, I did. I did know then that it was certainly not the equal of the law school at South Carolina. I didn't know much about any other law school [laughs], and so I didn't know what to compare it to. But, um, uh, history, of course, will support my assertion that, uh, it was not, uh, it was not an equal, uh, facility. In fact, [laughs] Thurgood Marshall referred to it as "a Jim Crow dump." [Laughter]

Um, all right, well, they began. They hired a law school dean and, uh, they began hiring teachers, uh, who came to the campus while I am in the process of, uh, of completing my undergraduate studies. Now, these, uh – the law school people needed students. And, of course, I guess the word had gone around that there's a veteran down there, a young fool named Perry,

who claims he's going to study law. "Why don't you see him?" So, one such person came to me, and I responded, "Well, no, but I'm going to go to Howard. Yeah, I'm going to study law."

So, this fellow said, "Well," said, "I can understand and appreciate that. Why don't you come in and sit in and listen at some of what will be going on? And you'll better understand what you're going to be exposed to when you get to Howard." I was, of course – I had only part-time courses, so I did have time to go and, and, monitor and sit in. And so, that's how I became involved in the study.

Uh, I ended up remaining at that institution. And, um, there weren't many of us, and we studied hard. We had teachers who had been well trained. Uh, Dean – the dean was Benner Turner [Benner C. Turner], a graduate of Harvard University's law school. There were others, uh, who had graduated from other very fine institutions: Columbia University, uh, University of Kansas, University of Iowa, uh, and several others. And, of course, they instilled, uh, within us a, uh, uh, a concept of hard work. We had to develop. We had to study. Uh, [clears throat] –

JM: Just five in your – [clears throat] excuse me – just five in your class?

MP: In the graduating class of 19 –

JM: '51.

MP: '51.

JM: Yeah.

MP: Uh, the first class [25:00] had only two graduates.

JM: Yeah, yeah.

MP: That was the class of '50. Now, interestingly, the first class – you see, at the time, and up until this time, South Carolina had a practice by which, uh – well, it was known as the "diploma privilege." If you had graduated from a law school in South Carolina, you didn't have

to take the state bar examination. You were admitted under what became popularly known as the “diploma privilege.”

Uh, now, when [laughs] the law school at South Carolina State was created, uh, the officials decided, “Well, look, we’ve got to do something about this, this diploma privilege.” And so, they, uh, persuaded the legislature to enact a law requiring the taking, the passing of the bar examination by all law school graduates. And so, I tell – I tell, uh, young people, “Anybody who has graduated since 1951, [laughs], uh, that you – if you had to take the bar examination, you can, of course, blame me.” [Laughter]

All right. The first graduates, the class of, uh, of ’50, did not have to take the examination. But the second class, my class, uh, came into contact with that new requirement, and we had to take the examination. By the way, I was the only person who passed, of the group. Now, um, whether the examination was fairly administered or anything like that, I cannot tell you. But I can tell you, I studied my can off [laughter] for, uh, the thing, and I have no, no question in my mind that I passed.

I took an enormously long time to answer your question.

JM: No, Judge, that’s wonderful! Let me, let me – it’s superb and exactly what we’re hoping to learn, so thank you for all of this. Let me, let me ask you this: So, graduating in ’51 – obviously, being in law school, ’48 to ’51, you’re tracking cases like *Sipuel* [*Sipuel v. Board of Regents of University of Oklahoma*, 1948] and *McLaurin* [*McLaurin v. Oklahoma State Regents*, 1950], so that would be, those would be notes of some optimism in a still very difficult context.

MP: Oh, yes.

JM: Yeah.

MP: I studied them –

JM: Absolutely.

MP: Uh, as every case was decided –

JM: Exactly.

MP: I studied them. And I sat and I, um, um, I – they became a part of my concepts.

Uh, and whenever other cases were tried, if it was physically possible for me to do so, [laughs] I went and I attended.

JM: Yeah.

MP: Uh, I began, um, even before law school – even *during* law school, but certainly during my first period after I graduated from law school, I would go and I would sit in the courtroom while cases were being tried.

JM: May I ask about –?

MP: Certainly!

JM: Yeah, I want to ask, indeed, if you have any recollections of sitting in at the trial phase of *Briggs v. Elliott*?

MP: Yes! Yes! By the way, *Briggs versus Elliott* came to trial in, uh – what was it? In early June of 1951 – and, um, I had just graduated from law school, had already taken the bar examination! The results, of course, had not yet been published. I didn't know whether I had passed or failed. So, I and a few others traveled to Charleston.

Now, there were hordes of people there. It was a well-publicized case. And, of course, uh, you had, uh, this – turned out, it was going to be a major challenge to, to segregated education. And so, I, uh, managed to worm through the crowd and ultimately – didn't immediately – succeed in getting into the courtroom. But being tall and having a long neck, I

was able to rubberneck over and eventually I managed to squeeze into the courtroom. [30:00]

But, yes, I sat and I witnessed the trial of *Briggs versus Elliott*.

JM: Yeah, yeah. Um, [clears throat] meanwhile, you are also having to find a strategy that will earn you a living.

MP: [Laughs]

JM: And it's not an easy thing.

MP: Not an easy thing.

JM: Can you tell me this: Can you quickly sketch, quickly sketch the nature of black law practice in South Carolina? And there weren't many black lawyers, obviously, in the early '50s.

MP: Right.

JM: And then, how you made your choice about how to proceed.

MP: Uh, yes. Uh, there was no such thing – I couldn't get a job, certainly not as a law clerk. Um, no, uh, no government employment was offered me. Um, in fact, no employment opportunities presented themselves. And so, it became obvious that if it was going to be the law, then I was going to have to open a law office.

Well, uh, I was born and reared in Columbia. That was home. I had relatives in Spartanburg [South Carolina], uh, one of whom operated a rather successful funeral home establishment. And he, uh, and my mother conferred, and he suggested to my mother that it would be a good idea if I, if I chose to come to Spartanburg. Spartanburg did not have any black attorneys. Columbia, by the way, had, um, I think, about three at the time. [Someone coughs] [Laughs] So, Columbia was, was considered crowded. Can you imagine that? [Laughter]

JM: Yeah, yeah.

MP: And, uh, ultimately, of course, I went to Spartanburg. By the way, I practiced there and stayed there for ten years before I returned in 19--, uh, the end of the 1950s, early 1960s to come back to Columbia.

JM: Yeah, yeah.

MP: Well, [clears throat] I, um, opened a law office in an abandoned – it must have been a condemned building, [laughs] uh, a one-room office, um, a desk that I had purchased from some company, a secondhand desk. I had an old, um, typewriter, one of the old, uh, Underwood typewriters [laughs] that you could look through and everything. And, uh, this was, of course, before word processing, certainly before computers and everything. And, uh, by the way, I did have some typing skills, [laughs] so I was able to, to type, you know, my own documents.

JM: No secretary?

MP: No secretary. That was –

JM: Out of the question?

MP: That was later. That was out of the question. Um, and, of course, uh, you know, uh, the idea was you needed, you needed cases. Well, you know, uh, people just don't rush into the office of a very young, inexperienced lawyer, [laughs] uh, certainly not a young inexperienced black lawyer. Uh, white lawyers might fare just a slight bit better, but, uh, when you're young and inexperienced, you don't attract business.

Now, this cousin of mine, who, uh, had this business, uh, signed a bond or in some way got a person out of custody who had committed some traffic offense, just a simple traffic offense, had to go to the Municipal Court. So, this was my first foray into a courtroom. And so, I went, and, um, there were lots of people – plenty of young lawyers, also, of whom I was the only black.

And the municipal judge, uh, who was just a racist of the first order, [35:00] um, received the other lawyers cordially. By the way, the extent of his authority and jurisdiction was, [laughs] upon the finding of “guilty,” to impose a sentence that included, uh, *either* imprisonment for up to thirty days *or* a monetary fine of up to a hundred dollars. That was the extent of his authority. And so, routinely, as these young white lawyers appeared before him, [laughs] he was letting them off with a ten-dollar fine or, uh, maybe fifteen dollars, uh, or just, just probation.

Uh, finally, when they called my case, I went forward. By the way, I had on, had on my clean suit, my clean shirt. I had my briefcase that my wife had given me for graduation; didn’t have a thing in it but a legal, a pad. Uh, and I went forward and stood before him. There weren’t – there wasn’t a prosecuting attorney. The police officers normally did their own prosecuting. So, he looked up at me and he said, “Yeah? What you want?” [laughs] I said, “Well, your Honor, I’m Matthew Perry. I’m an attorney here to represent Mr. Such-and-such.”

So, he looked, with a frown on his face, and, um, without affording me an opportunity to present evidence on behalf of my client, he announced that he found my client guilty and imposed a sentence of thirty days or a fine of a hundred dollars – by comparison, you see, with what he had been doing. Well, I was crushed because of the, uh, the, uh, unfairness of – but what could I do about it?

You can imagine that didn’t do anything for my reputation. Uh, who would want to hire a young lawyer [laughs] who got that kind of result at the Municipal Court? It took quite a while for me to get another case. And the next time I went over there, something similar happened. And so, on a third time, sometime later, by this time I had, uh, learned – you see, in law school, you know, you don’t really learn how to operate in court – back at that time. Now, in today’s

law school training, much of this is, uh, is, uh, imparted to students in clinical courses, but not then, certainly not in our law school.

To appeal from a decision of the Municipal Court, you had to file your appeal within – [pause] within five days.

JM: Wow.

MP: The appeal was from the Municipal Court to the Circuit Court of the county, and from an adverse decision there to the State Supreme Court. So, the circuit judges had appellate rights over the decisions of the Municipal Courts and also Magistrates Courts. But you had to serve a notice of appeal, and your notice had to contain your exceptions, [laughter] the grounds on which you were going to appeal.

Well, I had, uh, you know, come upon this idea, “If you’re going to exist here, you’ve got to find a way to get around this judge,” and so I learned how to draft a notice of appeal. And so, I had drafted the notice of appeal for use, and when the case came, I put the name of the client on it. And, of course, uh, very simply, I had some grounds that, uh, the, uh, decision was not based upon, uh, evidence, uh, was contrary to the evidence presented, words of that sort. I forget what other ground I laid out in there, but it was a good ground.

And so, when I appeared before him, he, uh, he tried the same thing. And when he did, I opened my briefcase, [laughs] still brand-new [40:00] briefcase, pulled out my notice of appeal, laid it before him. By the way, it had to be served upon the municipal judge. He had to acknowledge receipt of it. And I said, “Your Honor, would you please accept service of this notice of appeal?”

So, he was shocked. He looked up at me and he says, “What! What is this? What, what did – how did you know what my decision was going to be?” I said, “Your Honor,” I said, “This

has been your decision every time I've come here. No doubt in my mind. So, would you –?"
So, I went up to the circuit judge and I got him reversed. Now, the next time I appeared, the reception was somewhat, somewhat different.

JM: Wow.

MP: And so, meanwhile, the word had begun to get around. People started coming to me in Spartanburg County, and the word began to spread into adjoining counties. I began getting calls. One such call came from some people down in Union County that adjoins Spartanburg County to the south, uh, a group down there called the Union County Voters League. A group of black citizens had gotten together to form a local group to address injustices.

And so, there was a young man who had been convicted of some offense before a magistrate judge down there. Um, he was, uh, given just a gargantuan sentence under circumstances that were unjustified. And they came to me – they didn't get to me until Day Number Six. By the way, the five-day rule was applicable. Now, I had to get around the fact that, that, uh, the appeal time had expired. And yet, here was this young man sitting in jail. He was illiterate. His family was illiterate. And, uh, you know, these were people who had no resources at all.

And, uh, so, uh I decided [laughs] to file a petition for a writ of habeas corpus [laughs] uh, challenging things. And, of course, uh, it didn't get – the magistrate judge ruled against me, and so did the circuit judge. But I appealed to the South Carolina Supreme Court, and lo and behold, we won it. So, that was my first, uh, my first victory.

JM: Amazing.

MP: In the South Carolina Supreme Court.

JM: Yeah. Judge, may I –?

MP: Now –

JM: I'm sorry. May I ask?

MP: Certainly, certainly.

JM: [Clears throat] I know we have, I think, about ten more minutes.

MP: [Laughs]

JM: I want to draw your attention –

MP: I told you. I warned you. [Laughter]

JM: I want to draw your attention to two issues.

MP: Yes?

JM: One is, um – one is the network of civil rights attorneys into which you became, in the early '50s, mid 1950s, closely involved, um, and your perspectives on that expanding network. You've mentioned Thurgood Marshall, Robert Carter, but now the circle will widen even further.

MP: Yes.

JM: Um, and how that – I'm interested on your perspectives on that network and how it operated and what it meant to you as a –

MP: Yes.

JM: That issue. And then, the second question –

JP: I'm going to pause.

JM: Oh, John is going to pause just one sec.

[Recording stops and then resumes]

JB: We're back.

JM: Okay, we're back on. Let me have you start with that, and then I'll finish with one other question –

MP: All right.

JM: And we'll talk about the Flemming case [*Flemming v. the South Carolina Electric and Gas Company*].

MP: Well, of course, uh, I became associated with, uh, with the NAACP Legal Defense Fund, um, in this respect. I became what was popularly known as a “cooperating attorney.” I was not a paid, uh, uh employee. However, that, uh, group, uh, paid a small stipend from time to time whenever I handled a case that was, uh, um, supported by that group.

I also became, uh, friendly with and associated with the office of the NAACP General Counsel, uh, two separate organizations, and [laughs], uh, in this respect, why – the public knew nothing about such a division, but it nevertheless was, was a fact – and in this respect, why, I, uh, I attended seminars, uh, sponsored by the NAACP Legal Defense Fund and by the NAACP Office of General Counsel. At all of its national conventions, they had meetings of lawyers who were called in from around the country, and we, uh, we formed a network of associates. We began to interact with each other nationally. We formed friendships. And we, we, um, gained a measure [someone coughs] of knowledge about what was going on in various places. And in this respect, why, I guess we grew and we developed.

JM: And one – I know one very interesting experience that arose out of that network was you traveled to D.C. for, um, the, uh, the dry run of *Brown v. Board*.

MP: Oh, yes, I did.

JM: Can you describe that experience?

MP: Well, uh, when, uh, the cases were set for argument in the Supreme Court, uh, [clears throat], uh, lawyers from around the country gathered, as did other citizens from around the country. And so, I and a group of South Carolina colleagues traveled to Washington. And, um, the, uh, cases were first argued, uh, moot court style over at the Howard University Law School. The, uh, the “justices,” of course, were in some instances professors at Howard or distinguished lawyers from around the country who sat and who mimicked and who acted as the then-sitting Supreme Court Justices, uh, each of them, you know, uh, speaking to or representing the judicial philosophy of a particular justice. And so, uh, these lawyers argued, argued out, uh, the principles that they argued before the Supreme Court beginning the following day. Uh, it was a, an exhilarating experience. Thurgood Marshall, Robert Carter, Spottswood Robinson, um, uh –

JM: Jack Greenberg?

MP: Jack Greenberg argued, yes.

JM: Constance Baker [Motley]?

MP: You see, Constance Baker Motley was, had become a part of the staff, but did not argue –

JM: Yes.

MP: Either of the cases.

JM: Of course, yes. Yeah.

MP: She was then sort of a neophyte.

JM: Right, right. Let me ask, um, to finish up here today, let – you, um, you became involved in a very interesting and very important, um, case, uh, that evolved from '54 to '56, the

Flemming case on intrastate travel. And, um, I'm wondering if you can describe that case and its implications.

MP: Well, *Flemming versus the South Carolina Electric and Gas Company* – the, uh, bus transportation system in Columbia, South Carolina, was then – is it still operated by [laughs] the South Carolina Electric and Gas Company? At least, it was then. Uh, I'll have to come up to date [laughter] on who operates it now? Um, but it – the bus passenger service was provided on a segregated basis. Uh, you got into the bus, if you were a black citizen, you went to the back of the bus and you, uh, you sat on seats beginning from the back forward, uh, never sitting in an area of the bus reserved for white citizens. Uh, again, you know, I grew up as a boy under that system. I guess, you know, as a boy, you know, as a child, uh, I just accepted it. It did not – it didn't offend me. But as I grew, as I began to grow intellectually, I did begin to wonder about it.

Okay. There was, of course, a law in South Carolina that *required* such [50:00] racial separation, whites from the front and blacks from the rear. So, uh, the case that you mention, uh, Sarah Mae Flemming – she later became Sarah Mae Flemming Brown – uh, a young black woman traveling to her place of employment as a domestic, uh, sat in a seat, uh, near the dividing line, you might say, but one that [laughs] the bus driver perceived was for whites. He ordered her to remove herself. And, uh, through some difficulty, she was trying to get off of the bus, and even there, he was going to prohibit her leaving through the front door. Buses had a front door and another door in the back. He was going to require her to go out of the other door. In the process, he shoved her. Uh, she claims that he, that he, he hit her in her abdomen.

In any event, she, uh, came and, uh, she made her situation known to local persons. Uh, there was a woman here at the time who became very famous, very active in South Carolina civil rights matters, Mrs. Simkins, Modjeska Simkins. And Mrs. Simkins sent her to a, uh, very fine

white attorney named, uh, Wittenburg, Phil [Philip] Wittenburg, and Mr. Wittenburg filed a suit on behalf of Miss Flemming against the South Carolina Electric and Gas Company. Um, he, uh, by the way, incurred the wrath of the white community in so doing. But in any event he did, and, uh [clears throat], uh, his case – uh, let's see. They dismissed his case. He, he, uh, went out.

And so, they contacted Thurgood Marshall's office. And so, they came, Thurgood Marshall and Bob Carter came, and, uh, [clears throat] they appealed the case to the Fourth Circuit. The Fourth Circuit, uh, reversed and sent it back. Well, [clears throat] meanwhile, uh, I understand – what – the Klan or somebody burned a cross on Mr. Wittenburg's yard over there in Sumter County. And, uh, either then or later, he got out of the case.

JM: Left the state, I think, even.

MP: Yes.

JM: Took his family and left the state.

MP: That's right. And so, uh, uh, the case was sent to a friend of mine, uh, with whom I later joined, and we joined forces, Lincoln Jenkins [Jr.], who took over her case at the trial level. And he called me, uh, to come and assist him. I came to Columbia. I was still at Spartanburg. And, uh, we, uh, we ultimately went to, went to trial. Uh, by the way, the precedent had already been established in the Fourth Circuit, uh, holding that the South Carolina statutes requiring separation of the races on intrastate travel in South Carolina was, uh, unconstitutional. And, uh, so, we went to trial. We, uh, brought the case to trial, but we lost it at trial. The trial judge, no friend of ours, uh, dealt with us. But we left with the impression that the case had served its purpose.

Now, that case preceded *Browder versus Gayle* [1956], the Montgomery bus, uh, case, of course, that everybody says was the premier case. That case made Ms. Rosa Parks famous.

[55:00] But Sarah Mae Flemming Brown's case was the first one on the record.

JM: Indeed, her— the incident that set it all in motion was, uh, June 22, 1954, indeed, a good bit ahead of the Montgomery case.

MP: Yes, right.

JM: Yeah, yeah. Judge, we want to be respectful of your time. In fact, I think we've kept you a tad bit beyond [laughter] even what was announced. But I just want —

MP: [Laughs] And I'm responsible for —

JM: Well, I just want to say what a special honor and privilege it is for us, and we're most, most grateful.

MP: Thank you.

JM: And it's an extra privilege to meet you here in this courthouse named for you.

MP: Thank you, thank you.

JM: And we're very grateful for the opportunity.

MP: Well, I'm certainly — it's my pleasure, and I thank you for coming.

JM: Thank you.

[Sound of door opening?]

MP: And I, uh — all right.

Unidentified Female: I was coming to get you, Judge Perry.

JM: Wow, right on the mark!

MP: All right!

[Recording ends at 55:52]

END OF INTERVIEW