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Columbia, South Carolina

Transcribed by:
CHERYL A. SMITH
Circuit Court Reporter
from DCRP, Digital
Courtroom Recorder
Project

INDEXPAGE

There were no witnesses called.

EXHIBITSNODESCRIPTIONIDEVD

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:56 a.m.)

THE COURT: Thank you. All right. Ms. McCallister?

MS. McCALLISTER: Yes, sir, Your Honor.

THE COURT: Happy to hear from you.

MS. McCALLISTER: Your Honor, we're here today on four cases, Marie Assa'ad-Faltas vs. The State of South Carolina. The four docket numbers are 2019-CP-40-0112, 19-CP-40-2217, -2218 and -2219, Your Honor. The packet that I put up there goes to Case Number 0112. I wasn't sure if Your Honor had gotten a copy of that one.

The motion that was filed is a motion to relieve counsel. Ms. Cassity Brewer has been appointed to represent Dr. Faltas.

The motion is the same. The caption of the motion contains all four of these case numbers, so it's the same motion for all four cases, Your Honor.

And it is Dr. Faltas's motion, so I'll let you hear from Ms. Brewer or Dr. Faltas, but the State would like to be heard at some point, Your Honor.

THE COURT: All right. Ms. Brewer?

MS. BREWER: Yes, sir, Your Honor.

THE COURT: How are you doing this morning?

MS. BREWER: I'm good. How are you?

THE COURT: Doing well.

1 I will be happy to hear from you first.

2 MS. BREWER: Your Honor, as Ms. McCallister said,
3 this is Dr. Faltas's motion. I was appointed by Indigent
4 Defense to represent her. And she's -- there's a current
5 -- I -- I have not met Ms. Faltas until this morning.
6 I've spoken to her on the phone. She's filed a bar
7 complaint against me that is still pending at this time.
8 I'm not opposed to her motion, and I will -- I'll let her
9 address why she feels that I need to be relieved.

10 But I've spoken with Indigent Defense about this
11 case. They're having some difficulty appointing another
12 attorney to her case as her previous -- previously
13 appointed attorneys have conflicted out of the case. And
14 I'll let Ms. McCallister address that. But I just wanted
15 to make you aware that I'm not -- I'm not opposed -- I
16 don't care either way whether I'm relieved or not, but
17 Indigent Defense is just having some difficulty appointing
18 another attorney to her case.

19 THE COURT: All right. Dr. Faltas, happy to hear
20 from you, ma'am.

21 APPLICANT ASSA'AD-FALTAS: Good morning, Your Honor.
22 First, I ask for permission to address the Court from a
23 seated position because of my various disabilities. Is
24 permission granted?

25 THE COURT: Yeah. I'll let you -- I'll let you

1 remain seated.

2 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

3 The second is nobody objected -- am I audible?

4 THE COURT: Ma'am?

5 APPLICANT ASSA'AD-FALTAS: Am I audible?

6 UNIDENTIFIED: Just point it towards you,
7 (inaudible).

8 APPLICANT ASSA'AD-FALTAS: Am I audible now?

9 THE COURT: Yes, ma'am.

10 APPLICANT ASSA'AD-FALTAS: Thank you.

11 First, I object to Ms. McCallister having put on the
12 bench stuff that she did not show Ms. Brewer or myself.

13 Second, motions to relieve counsel are to be heard ex
14 parte in respect for the attorney-client privilege in case
15 I still have some rights in the courts of this state.

16 The third matter is that I would like to ask if Your
17 Honor has bias. And this is not any disrespect. This is
18 something that I ask for of any jurist before whom I come,
19 because if I don't ask, how will I know? I am a Coptic
20 Orthodox Christian, which is the Christian minority of
21 Egypt. According to the U.S. Supreme Court's decision in
22 Saint Francis College vs. Al-Khazraji (phonetic), Middle
23 Easterns are a racial minority protected under the Federal
24 Section 1981 and 1983.

25 The second issue is that, having been raised Catholic

1 and converted to orthodoxy, I have yet to ask if Your
2 Honor has bias against the Catholic and Orthodox
3 denominations, Your Honor being a protestant.

4 THE COURT: The Catholic and what else? I'm sorry.

5 APPLICANT ASSA'AD-FALTAS: Orthodox.

6 THE COURT: Orthodox. Okay.

7 Well, let me address these in the order of which you
8 brought up objecting to what's been handed up to me. I've
9 seen your motion to be relieved -- or to have Ms. Brewer
10 relieved as your attorney. And that's what we're here on
11 today, okay?

12 I do not believe that these [sic] motion to be
13 relieved are to be ex parte, but regardless, there's
14 nobody else in the courtroom, okay, other than yourself,
15 Ms. Brewer, Ms. McCallister, my court reporters, a deputy,
16 my Madam Clerk and one of my bailiffs. That's it.

17 With regards to whether or not I have any conflict, I
18 do not know you, Dr. Faltas. Never heard of you until I
19 saw you on my roster. So I -- I do not have any conflict,
20 bias or prejudice towards you, okay?

21 So I think I've answered your three questions.

22 APPLICANT ASSA'AD-FALTAS: What -- the name Assa'ad,
23 part of my last name, to the non-Arabic speakers may sound
24 as if it's related to the president of Syria. It is not
25 at all. In Arabic it's not even the same word in Latin

1 characters. It's an -- I'm Coptic, meaning Egyptian. No
2 relationship. Did -- did my name cause an issue for Your
3 Honor?

4 THE COURT: I never thought of that until you just
5 brought it up. So no, ma'am, it does not.

6 APPLICANT ASSA'AD-FALTAS: All right. The next --
7 the next issue is that morally I am an absolute pacifist,
8 meaning I am totally opposed to war and violence and the
9 death penalty and abortion and murder under the name of
10 euthanasia and all of that, but Your Honor went to The
11 Citadel, which is a military institute. So do this moral
12 differences pose a problem for Your Honor?

13 THE COURT: No, ma'am, it does not.

14 APPLICANT ASSA'AD-FALTAS: All right. About the
15 motion being heard ex parte, I would like to note that the
16 State is here. The reason that motions to relieve counsel
17 are heard ex parte is to protect the attorney-client
18 privilege, whatever of it remained. I did not want to
19 disclose that I filed a bar grievance against Ms. Brewer,
20 but she disclosed it herself, as is her right.

21 The other issue is that -- that that was not in my
22 motion.

23 THE COURT: I'm listening.

24 APPLICANT ASSA'AD-FALTAS: Okay. My complaint met at
25 least the initial threshold, and that is under

1 investigation now. And I would like to make a complete
2 record even if the result is preordained.

3 THE COURT: Well, what I'm here to do today,
4 Dr. Faltas -- or do you wish that I call you
5 Dr. Assa'ad-Faltas?

6 APPLICANT ASSA'AD-FALTAS: Your Honor, we're about
7 the same age, so if you'd like to call me Marie, that's
8 fine.

9 THE COURT: I'm not going to do that. I'm going to
10 call you Doctor. I'm going to give you the respect that
11 you've earned through a doctoral degree in some way, shape
12 or form. So I'm going to -- I'm going to refer to you, if
13 that's okay, as Dr. -- either Dr. Faltas or
14 Dr. Assa'ad-Faltas.

15 APPLICANT ASSA'AD-FALTAS: Whichever Your Honor
16 prefers.

17 And it wasn't just some way. It was with honors
18 while being a Christian minority in majority Muslim Egypt.
19 And I was the youngest in my graduating medical school
20 class in July 1977. Graduated with honors.

21 And the reason I first came to this country is that
22 after the peace accords between Egypt and Israel, which I
23 staunchly support, President Carter requested an expedited
24 subset of the Fulbright Scholarships that were called
25 variously the Camp David Scholarships or the Peace

1 Fellowships. And I was among the first hundred selected
2 from all the country of Egypt, and, again, against the
3 odds being a Christian minority and, to a lesser extent,
4 being a female.

5 So going back to the issue, and I put it in a
6 nutshell, but I'd like to make a complete record, and
7 given what happened yesterday, I may need to call
8 witnesses. And I -- I'll tell you the issue in a
9 nutshell. Under Door A, the worst that can happen to my
10 cases is that I lose them, and yet would have preserved my
11 issues for further review being at the (indiscernible)
12 review in state courts or later federal courts under the
13 federal habeas statute while the State remedies -- after
14 the state remedies have been exhausted. This is under
15 Door A I represent myself. This is the worst that can
16 happen. Of course, the best that can happen ---

17 THE COURT: I think you're a little too close to that
18 -- to one of the -- to that microphone. That one's fine.
19 The bench recording microphone is fine. It was the
20 microphone for the rest of the Court.

21 APPLICANT ASSA'AD-FALTAS: If they can kindly tell me
22 where did they start losing me or having static so I can
23 go back and start again from that point.

24 THE COURT: I could understand you. I could just
25 hear some static, too. But you can go ahead.

1 APPLICANT ASSA'AD-FALTAS: Okay. So the worst that
2 can happen if I represent myself is that my cases get
3 dismissed, but I have preserved my issue.

4 THE COURT: Well ---

5 APPLICANT ASSA'AD-FALTAS: The best that can happen
6 with representation is that I lose my cases, my issues are
7 not preserved, and I get aggravated, even acquire new
8 false criminal charges, selected by the very person
9 appointed to get me out of the false conviction is that I
10 acquire new false convictions. This is the best that can
11 happen because she has proven that she has absolutely no
12 record of winning any PCR or criminal case. She has
13 proven that she has no interest in studying my case or
14 adopting any of my issues. And she had done -- she has
15 done some things that are unethical or at least giving
16 enough of an appearance of unethical behavior to where the
17 bar -- the -- the Office of Disciplinary Counsel has
18 opened an investigation.

19 So I do not want another lawyer. I do not want -- if
20 your conscience does not guide you to let me exercise the
21 same right that the worst Syrian murderer in this state
22 gets, that is up to your conscience. I cannot be your
23 conscience. I can only (indiscernible) my record. But a
24 rational person choosing between Option A where I don't
25 have a lawyer and the worst that can happen is that I lose

1 my case, or Option B where the best that can happen is
2 that I lose my case and I get my issues forfeited.

3 And, Your Honor, just yesterday the State Supreme
4 Court came up with a decision where I was represented
5 forcibly by appellate defense, and I had filed several
6 motions to relieve appellate -- and ironically, that was a
7 case where I had prevailed. PCR was granted for me by
8 retired Chief Justice Toal sitting as an acting Circuit
9 Court judge. She granted me PCR. But the State appealed,
10 and I asked to represent myself as a respondent. I was
11 denied that right. My appellate defense lawyer refused to
12 brief the issues. So now when I go to federal court, I
13 would have to explain excuse and prejudice. But if I were
14 to represent myself, I won't have.

15 And the reason I need witnesses, I need Ms. Jessica
16 Saxon and Mr. Robert Dudek to testify that I asked them to
17 brief the additional sustaining grounds, which they did
18 not.

19 May I -- may I pass -- may I pass that, please, Your
20 Honor?

21 THE COURT: What I want to deal with today,
22 Dr. Faltas, is this motion to relieve Ms. Brewer.

23 APPLICANT ASSA'AD-FALTAS: Okay.

24 THE COURT: Okay.

25 APPLICANT ASSA'AD-FALTAS: Ms. Brewer -- Ms. Brewer

1 has threatened to bring false criminal charges against me
2 of harassment and unlawful use of a telephone.

3 THE COURT: Okay.

4 APPLICANT ASSA'AD-FALTAS: She told me that she never
5 won a PCR case because all her clients are in jail. She
6 never won a criminal case. She does not even -- by that
7 threat of harassment and unlawful use of a telephone, she
8 proved to me that she does not know the law of either.
9 She has been most unpleasant and rude. I'm not asking for
10 another lawyer. Her only excuse is that they have -- they
11 are having difficulty getting another lawyer for me when I
12 don't want another lawyer.

13 THE COURT: Okay.

14 APPLICANT ASSA'AD-FALTAS: Come what may, I don't
15 want her. That is already a conflict by my having -- by
16 her having done those actions and by my having had to file
17 a grievance against her, which, as I said, met this
18 threshold of a new investigation. There is absolutely no
19 reason to impose an association I do not want or need.

20 In this country there is a constitution, and it has a
21 First Amendment. And the states must grant under the 14th
22 Amendment those constitutional rights to everyone under
23 its jurisdiction. The First Amendment, that is freedom of
24 association. I can associate ---

25 THE COURT: Go ahead. I'm sorry.

1 APPLICANT ASSA'AD-FALTAS: I can associate with whom
2 I want, and I can refuse to associate with whom I do not
3 want to associate. So I do not want to associate with her
4 or with any other lawyer, come what may.

5 THE COURT: Okay.

6 APPLICANT ASSA'AD-FALTAS: The other -- the other
7 thing is that by being forced -- her having being forced
8 on me, I may incur financial liability, which I do not
9 want. There is a freedom of contract in this country, and
10 that is also a constitutional right. I do not want her.
11 I do not want her paid to pretend to represent me. I do
12 not want her to -- to associate with me. She has a
13 conflict. And to begin with, she is totally ineffective.

14 THE COURT: Okay. Thank you, Dr. Faltas.

15 APPLICANT ASSA'AD-FALTAS: I get ---

16 THE COURT: Let me hear from you, Ms. McCallister.

17 MS. MCCALLISTER: Thank you, Your Honor.

18 APPLICANT ASSA'AD-FALTAS: I am making my point that
19 it should be ex parte, and the State has no reason to
20 speak on this.

21 THE COURT: Well, I'm going -- I'm going to give them
22 an opportunity to be heard on it.

23 APPLICANT ASSA'AD-FALTAS: Over my objection.

24 THE COURT: Yeah. Over your objection, yes.

25 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

1 MS. MCCALLISTER: Thank you, Your Honor. The -- the
2 main issue that I want to address is this issue of not
3 appointing another attorney. Your Honor, we've been down
4 this road with Dr. Faltas before. She had a case in 2018
5 where she had an attorney appointed. She came before
6 Judge Newman, made a motion to relieve him, and Judge
7 Newman granted that motion.

8 Your Honor, there was an order from the Supreme Court
9 in September of 2017 which said that Dr. Faltas could not
10 represent herself pro se as a plaintiff in civil actions
11 in this state, so the State filed a petition in the
12 Supreme Court's original jurisdiction to challenge Judge
13 Newman's order relieving her counsel and allowing her to
14 proceed pro se in the PCR, because PCRs are a civil
15 action.

16 Your Honor, the Supreme Court then issued another
17 order clarifying their previous 2017 order in which they
18 reiterated that Dr. Faltas may not proceed pro se as a
19 plaintiff in a PCR action in this state.

20 So regardless of what Your Honor decides about
21 relieving Ms. Brewer specifically, it's the State's
22 position that another attorney must be appointed for her
23 because that is the Supreme Court's order.

24 And so -- and, Your Honor, just kind of to --
25 Ms. Brewer has already said it. Dr. Faltas, as long as I

1 have known her, has moved to relieve every attorney that
2 she has had appointed to her. And so there are a lot of
3 attorneys who she -- she alleges that she has conflicts
4 with. And so, you know, from what I can see from her
5 motion, I don't believe she does have a conflict with
6 Ms. Brewer, and so we would ask for, at the very least, if
7 Ms. Brewer is relieved, that another attorney be appointed
8 immediately, because Dr. Faltas cannot be pro se in PCRs.

9 Thank you.

10 APPLICANT ASSA'AD-FALTAS: May I briefly say
11 something in reply?

12 THE COURT: Yes, ma'am.

13 APPLICANT ASSA'AD-FALTAS: Okay. Yesterday I filed a
14 hybrid action in federal court. It is both ---

15 THE COURT: Hold on just a minute, Doctor, please.

16 (Pause in proceedings.)

17 THE COURT: I'm sorry. Go ahead.

18 APPLICANT ASSA'AD-FALTAS: I filed a hybrid action in
19 federal court. It's hybrid in that it's both a federal
20 habeas and a Section 1983 claim. It was filed, but it has
21 not been assigned yet because also in federal court,
22 southern judges have conflicts that are none of my fault.
23 People marry people. People have -- have -- so in that --
24 in that federal action, I'm asking for an injunction
25 giving me the equal right. In that action -- should I

1 step back from the microphone or closer?

2 THE COURT: You're fine.

3 APPLICANT ASSA'AD-FALTAS: In that federal action, I
4 am asking for injunctions giving me the equal right to
5 represent myself.

6 And so the other option is to relieve Ms. Brewer,
7 stay the case pending the federal action. And if the
8 federal court comes back ---

9 THE COURT: Go ahead.

10 APPLICANT ASSA'AD-FALTAS: --- and says, yes,
11 Dr. Faltas has a right to -- and incidentally, Your Honor,
12 the one time I was allowed to represent myself in a PCR
13 action, I won. And I won twice. Judge Goldsmith granted
14 me PCR. The State asked for reconsideration. He vacated,
15 not reversed himself and recused himself. Then the
16 Honorable Judge Gravely heard the same case. He granted
17 me PCR again. And then the State asked for
18 reconsideration. He denied reconsideration. And then the
19 State appealed. I'm the respondent. I asked to represent
20 myself pro se, but the State Supreme Court denied that.
21 So I am before the federal court saying I should be
22 allowed to represent myself pro se.

23 So the options would be to stay these cases until the
24 federal court gives us the answer, and if the answer is
25 positive, then, as Your Honor knows, that federal law and

1 the U.S. Constitution -- I'm sorry. That's my voice. The
2 supreme law of the land, they trump even the State Supreme
3 Court. So if the federal court say the federal
4 constitution requires me to be able to represent myself,
5 then that solves the problem.

6 THE COURT: Then what? I'm sorry.

7 APPLICANT ASSA'AD-FALTAS: Than that solves the
8 problem.

9 THE COURT: Okay.

10 APPLICANT ASSA'AD-FALTAS: If they say, no, she
11 either has to represent herself or withdraw her -- her PCR
12 -- I mean, she has to have counsel or withdraw her PCRs or
13 something, then it will be my choice. And at that point,
14 I would still have preserved my issues. But if a counsel
15 is forced on me and doesn't brief the issues I want, then
16 I would have defaulted them. Besides, the State law in
17 South Carolina is that in PCR, a lawyer is required to
18 brief all issues even if frivolous. And that case is
19 Hiott v. State. And that is a State Supreme Court case.

20 So I do not understand what the State's problem is.
21 Even if, God forbid, I were to brief frivolous issues,
22 that's -- that's what the law requires. But, in fact,
23 Your Honor, I had false harassment charges brought against
24 me, and I had the five-day jury trial before Judge Clifton
25 Newman pro se, and thank God I won ultimately. At that

1 time the end of that trial was a hung jury, but
2 ultimately, I won, the charges dismissed without
3 prejudice.

4 I also had the false unlawful use of telephone charge
5 brought against me in Municipal Court. And I represented
6 myself pro se, and I got that charge dismissed, again,
7 with prejudice.

8 So I have an excellent record representing myself
9 both as a criminal defendant and in PCR. The only time I
10 get bad results is when counsel is forced on me. And this
11 has happened in criminal trials. It has happened -- I'm
12 sorry. Let me take that back. The only time I get bad
13 results is that either when counsel is forced on me or I
14 am not allowed to proceed without counsel.

15 So the -- the good option is to relieve Ms. Brewer
16 and stay the case pending a decision from the federal
17 court. But otherwise, if you have to put me between
18 losing without a lawyer and without other adverse
19 consequences and losing with a lawyer with added adverse
20 consequences, any rational person would choose losing
21 without a lawyer.

22 May I -- may I -- but I need it back, please -- show
23 Your Honor the decision that came yesterday from the State
24 Supreme Court? And if -- just to make my record, I would
25 like the Court on short notice to subpoena Ms. Saxon so

1 she can testify that I asked her to brief the additional
2 sustaining grounds, and she refused. And this is a
3 problem for me in Federal Court now. May I -- may I show
4 it to Ms. McCallister and ask that she pass it to the ---

5 THE COURT: That's not what we're here for today,
6 okay, Dr. Faltas?

7 APPLICANT ASSA'AD-FALTAS: I'm just trying to say
8 that when forced -- counsel is forced on me, I ask them to
9 do reasonable things, they refuse and -- and we lose.

10 THE COURT: All right.

11 APPLICANT ASSA'AD-FALTAS: So there -- there is no
12 point of losing with all this aggravation. If I'm going
13 to lose, let me lose without it.

14 THE COURT: Well, here's what I'm bound by, okay? I
15 have reviewed your motion to relieve Ms. Brewer as your
16 attorney along with what appears to be some attached
17 emails between yourself and Ms. Brewer. It does not
18 appear that there's been any communication other than
19 what's taken place in these emails between yourself and
20 Ms. Brewer. I'm looking specifically at your November 14,
21 2019, email. I guess it's to Ms. Brewer. It looks like
22 some things may have been cut and pasted in here, but I'm
23 not sure.

24 And the reason I say that is, is because on the email
25 above, for instance, it says: To Ms. -- to Marie Faltas,

1 and it's from Ms. Brewer in response to your November 14,
2 2019, email. But in your November 14, 2019, 4:59 p.m.
3 email to Ms. Brewer, you indicate in there that you
4 strongly prefer to advocate pro se, which you've conveyed
5 to me here today.

6 APPLICANT ASSA'AD-FALTAS: Just for the record, Your
7 Honor ---

8 THE COURT: No. Hold on.

9 APPLICANT ASSA'AD-FALTAS: --- it's not cut and
10 pasted.

11 THE COURT: Dr. Faltas.

12 APPLICANT ASSA'AD-FALTAS: Sorry.

13 THE COURT: I gave you an opportunity to talk. It's
14 my turn now, okay?

15 APPLICANT ASSA'AD-FALTAS: Okay. It's not that ---

16 THE COURT: After I -- after I speak, if you need to
17 talk again, I'll let you talk, but I'm going to talk right
18 now, okay?

19 APPLICANT ASSA'AD-FALTAS: Okay.

20 THE COURT: All right. And, Ms. Brewer, it looks
21 like she responded seven days later indicating she had not
22 received a letter of appointment from the clerk's office
23 yet, but indicating that she would contact you after she
24 received such. And she asked that you please stop calling
25 her office and harassing her staff. I don't know and I

1 haven't heard today how many times you may have called her
2 office, but I do see the -- what you referenced in here
3 about Ms. Brewer conveying to you that you could be
4 charged with harassment or unlawful telephone use, I see
5 that, which would then, in and of itself, create a
6 conflict at that point. I do not see where -- where such
7 action was -- where such action was taken by Ms. Brewer.

8 Referring back to your November 14th email, you
9 indicate to Ms. Brewer that you would not accept failure
10 in any of your cases, giving an example of a surgeon who
11 kills every fourth patient or a pilot who crashes every
12 fourth plane -- plane, excuse me -- and request that she
13 contact you ASAP. And again, for the record, she
14 responded seven days later.

15 Moving on, I'm looking at an email that appears to be
16 from you. It doesn't reference who that email was -- was
17 to because, again, it looks like the emails were cut and
18 pasted in here in some capacity. And in your December 2,
19 2019, email at 12:08 p.m., you reference that Ms. Brewer
20 was appointed against your will, that she's played dumb
21 and pretended not to receive the appointment letter. And
22 when you tried to call, she responded, threatening to
23 bring false criminal charges against you. It looks like a
24 Pete Nosal, Nozelle or -- N-O-S-A-L, did reach out to you,
25 but you didn't talk with either one of them after that.

1 Who is Mr. Gunter?

2 APPLICANT ASSA'AD-FALTAS: Are you asking me, Your
3 Honor?

4 THE COURT: Okay. In the clerk's office?

5 UNIDENTIFIED: Yes.

6 THE COURT: Okay. That you contacted Mr. -- or asked
7 -- Mr. Gunter informed Judge Newman, Jocelyn Newman of
8 Ms. Brewer and her firm's refusal to work on your case
9 indicating that you -- further indicating that you're
10 going to file a grievance against Ms. Brewer for her,
11 quote, unjustified neglect of your case -- or my cases and
12 threats of bringing false criminal charges and, in
13 essence, demanding that Ms. Brewer call you today --
14 "today" being in all caps -- or, in all caps, that you'd
15 file a grievance tomorrow -- "tomorrow" being in all caps.

16 It appears that on December 2, 2019, at 2:35 p.m.,
17 just a little over two hours after your email was sent to
18 whom, I don't know, Ms. Brewer informs you that she was in
19 court elsewhere and that she had court all day the
20 following day, and that she would like to call you on
21 Wednesday so she could have a witness to your
22 conversation, asking you if there's a time that works
23 better for you on Wednesday, and further indicating that
24 Ms. Brewer may have a plea in general sessions that day,
25 but not sure and at what time that plea would be.

1 What appears to be your response on that same day of
2 December the 2nd at 6:53 p.m., you respond -- again, it
3 doesn't say to whom, but I'm assuming that it's to
4 Ms. Brewer, but, again, I'm not sure because it appears
5 that these emails were cut and pasted, to telling
6 Ms. Brewer at that point that it's too late and too
7 oppressive, inquiring as to why you should agree upon a
8 witness, and if it's someone from your -- "your" being in
9 all caps -- why would that person not lie for you, and if
10 it's someone from outside the office, how's that not --
11 "not" being in all caps -- breaching the attorney-client
12 privilege, further inquiring as to whether or not now --
13 "now" being in all caps -- admitting that you did receive
14 appointment letter and whether or not -- or further
15 inquiring as to when Ms. Brewer may have found it and did
16 she investigate the delay.

17 You further stated to Ms. Brewer -- again, I guess
18 it's to Ms. Brewer -- that you wanted to trust her
19 specifically after Mr. Nosal's call to you. But then you
20 say you see it as really a stalling tactic. You state
21 that, objectively and based on prior experience, that
22 having no lawyer at all in these cases is better than you
23 -- "you" being in all caps -- and tell Ms. Brewer that she
24 is ignorant and cruel, and that you should not be made to
25 suffer Ms. Brewer's bizarre conditions and delays. That

1 email was at 6:53 p.m. on December the 2nd.

2 In less than ten minutes, if I'm reading this
3 correctly, on December the 2nd of 2019, Ms. Brewer
4 responds to Ms. Faltas, again, indicating that she would
5 call on Wednesday, hoping that Ms. Faltas would be
6 available, emphasizing, again, that Ms. Brewer is in court
7 quite frequently, and that Wednesday would be the first
8 opportunity that Ms. Brewer would be free to call. And
9 Ms. Brewer finally states: I look forward to speaking
10 with you soon.

11 I do not see any further correspondence attached to
12 Dr. Faltas's motion to have Ms. Brewer relieved.

13 APPLICANT ASSA'AD-FALTAS: Am I allowed to say three
14 things for the record? Not yet? Okay.

15 THE COURT: Just hold on.

16 APPLICANT ASSA'AD-FALTAS: Thank you.

17 THE COURT: Like I said, Dr. Faltas, I'm going to
18 give you an opportunity to speak again, okay?

19 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

20 THE COURT: What you've brought to my attention today
21 is that Ms. Brewer has never won a PCR case, that she does
22 not know the law, and that there is a conflict. I
23 understand, Dr. Faltas, and respect -- certainly respect
24 what you have said today concerning your success on
25 postconviction relief actions. And I do not know the

1 total number of postconviction relief actions that are
2 filed in this state and the percentage of those
3 postconviction relief actions that are granted in this
4 state. I do know, based upon my experience as a lawyer
5 and as a judge, that very few postconviction relief
6 actions are won, period, which really doesn't matter to
7 your case. But for statistical purposes, the batting
8 average, so to speak, if you played baseball, is not very
9 good in postconviction relief actions. All right. So
10 saying that a lawyer has never won one, there are hundreds
11 of lawyers in this state that have never won one, hundreds
12 of lawyers in this state that may have won one out of a
13 hundred. So can't base such and compare such. I don't
14 think -- I think once you start comparing the success in
15 postconviction relief actions to success of a surgeon, so
16 to speak, or a success rate of a pilot piloting an
17 airplane, so to speak, is like comparing apples to
18 oranges. It is just not the same.

19 Your assertion that Ms. Brewer does not know the law,
20 I'm not sure how long Ms. Brewer has been practicing law.
21 That hasn't been conveyed to me here today. But she
22 obviously knows law or she wouldn't have passed the bar
23 and be allowed to practice law in this state, which brings
24 me -- so I don't think -- I think it's a blind assertion
25 that she does not know the law without any further

1 specifics, which brings me to the final issue raised here
2 concerning a conflict. I have not heard any specific
3 allegations or assertions of any specific conflicts in
4 Ms. Brewer handling your postconviction relief cases other
5 than an assertion.

6 I did hear from Dr. Faltas referencing that in her
7 attempts today, which I decline to see, with regards to
8 appellate defense, for instance, refusing to brief certain
9 issues in an appeal, okay? I will say that not every
10 lawyer -- or no lawyer is required to file any -- or brief
11 any and every issue or file any and every motion that a
12 litigant request that they do so. They're not required
13 to. The law does not require them to do so, and lawyers
14 that appear in courts throughout this county, state and
15 country have an ethical obligation to only file those
16 motions that are lawful and legitimate and not frivolous.

17 I see you shaking your head, Dr. Faltas. I
18 understand you disagree with me. And like I said, I'm
19 going to give you an opportunity to talk again briefly,
20 okay?

21 Now, what has been brought to my attention today is
22 that a grievance has, in fact, been filed against
23 Ms. Brewer by Dr. Faltas. And if I heard Dr. Faltas
24 correctly, Dr. Faltas indicated, I believe, that there
25 must be -- and maybe I'm paraphrasing here a little bit --

1 that there must be some legitimacy to the grievance or a
2 file wouldn't have been open. Is that correct,
3 Dr. Faltas? Isn't that what you said, in essence?

4 APPLICANT ASSA'AD-FALTAS: Prima facie legitimacy.

5 THE COURT: Okay. Well, I will say this. My
6 understanding is that, in every case that a grievance is
7 filed, a file is opened because they keep records of that
8 stuff.

9 APPLICANT ASSA'AD-FALTAS: No -- no -- no, sir.
10 That's not correct.

11 THE COURT: Okay. And I may be wrong on that.

12 APPLICANT ASSA'AD-FALTAS: Yes.

13 THE COURT: But that's my understanding. And my
14 understanding may be in error.

15 APPLICANT ASSA'AD-FALTAS: We can get witnesses. We
16 can get witnesses to make ---

17 THE COURT: Well, and you'll deal with that through
18 the grievance process and deal with witnesses there, not
19 in this courtroom, okay?

20 APPLICANT ASSA'AD-FALTAS: No. I mean -- sorry.

21 THE COURT: I told you I'd give you a chance. Hold
22 on.

23 APPLICANT ASSA'AD-FALTAS: Okay, okay, okay.

24 THE COURT: So what I'm tasked with here is, in light
25 of what I've heard from Dr. Faltas as to whether or not I

1 relieve Ms. Brewer, I have looked at the order from our
2 State Supreme Court dated September 20th of 2019 which
3 prohibits Dr. Faltas from appearing pro se. In that order
4 of September 20th of 2019, references the previous
5 September 27, 2017, from our State Supreme Court
6 prohibiting Dr. Faltas, in September of 2017, from
7 representing herself pro se in any civil actions in the
8 state -- in this state. The September 20, 2019, order
9 prohibited Dr. Faltas from representing herself pro se in
10 any postconviction relief matters in this state as well.

11 So what I'm tasked with and what the State has asked
12 me to do here today is that if I, in fact, relieve
13 Ms. Brewer, then the State is asking that I appoint other
14 counsel to represent Dr. Faltas pursuant to our State
15 Supreme Court September 20, 2019, order. Dr. Faltas has
16 made it abundantly clear that she doesn't want a lawyer.
17 She doesn't want a lawyer. But I am constrained and
18 required to follow the instructions of our State Supreme
19 Court.

20 So, I guess, Dr. Faltas, and I heard what you asked
21 about me staying these proceedings.

22 APPLICANT ASSA'AD-FALTAS: I did [sic] hear the last
23 thing Your Honor said.

24 THE COURT: Ma'am?

25 APPLICANT ASSA'AD-FALTAS: I did not hear the last

1 thing Your Honor said.

2 THE COURT: Okay. Well, I heard what you asked me to
3 -- to stay these proceedings until your injunction in
4 District Court -- Federal District Court is decided upon.
5 What I'm looking at is, is if I relieve -- if I relieve
6 Ms. Brewer, then I guess I have two -- three options here:
7 appoint new counsel of what you said you don't want, but
8 like I said, I'm constrained with following our State
9 Supreme Court's instructions or order; two, allow you to
10 obtain your own counsel; or three, in essence, issue a
11 stay pending a decision by the U.S. District Court.

12 Dr. Faltas, I told you I'd give you a chance to speak
13 again. I'll -- as I'm considering what I'm going to do
14 here, I'll hear from you.

15 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.
16 And if I may very briefly and in the order, the first
17 housekeeping matter, I think, I counted at least four
18 times where Your Honor said ---

19 THE COURT: Back up a little bit.

20 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.
21 And as a -- is this better?

22 THE COURT: Yes, ma'am.

23 APPLICANT ASSA'AD-FALTAS: As -- as a housekeeping
24 matter, I think I counted at least four or five times Your
25 Honor said the emails were cut and pasted. Nothing was

1 cut and pasted. It's called an e-mail chain where, when
2 you send an email and someone replies and you reply to the
3 reply, it all stays within the same email. And that's how
4 I wanted it. And I hit "print" from the -- from the menu.
5 So ---

6 THE COURT: Well, I'm looking at -- Dr. Faltas, I'm
7 looking at some of my e-mail chains, and it always has
8 still who it's to, what time it is, you know, the subject,
9 et cetera. And what I was looking at in your -- the
10 attachments to your motion, that information is not in
11 there. But in any event, I'm just clarifying that. But
12 go ahead.

13 APPLICANT ASSA'AD-FALTAS: Different systems. And if
14 you'd like to affirm me so I can for the record say that
15 nothing was cut or pasted, because that would imply some
16 falsification of the emails, and that's not the case.

17 The second issue, Your Honor, and I'm also trying to
18 remember them, you said that the comparison between a
19 surgeon and -- and a pilot and the lawyers is apples and
20 oranges. Please don't take offense on me -- from me, but
21 you heard me (indiscernible) not you personally but the
22 legal profession has mediocerize (phonetic) itself.

23 THE COURT: Made me what? I'm sorry.

24 APPLICANT ASSA'AD-FALTAS: Mediocerize (phonetic)
25 itself. That is mutual assured ---

1 THE COURT: Okay. Go ahead. I was asking my law
2 clerk. I still didn't understand you.

3 APPLICANT ASSA'AD-FALTAS: Mediocerized (phonetic)
4 itself. I call it mutual assured mediocrity.

5 Just as we expect all surgeons to complete
6 successfully all surgeries that -- that can be completed
7 successfully, we should expect all lawyers to win all
8 winnable cases. We should expect all lawyers to win all
9 justly winnable cases.

10 Going back to Your Honor's statement that she must be
11 competent because she -- she passed the bar, I am quoting
12 at that time U.S. federal magistrate now U.S. District
13 Court Judge Bruce Howe Hendricks and which Judge Gergel,
14 U.S. District Judge Gergel also quoted stunning ignorance
15 of the law. That wasn't about Ms. Brewer. That was about
16 another lawyer who had passed the bar and been licensed.
17 And several times in Federal Court things have been said
18 about lawyers who have passed the bar. Lawyers who have
19 passed the bar get disbarred, sanctioned, suspended ---

20 THE COURT: And you're exactly right.

21 APPLICANT ASSA'AD-FALTAS: --- all the time.

22 Now, this is not enough. And when I came on the
23 Fulbright Scholarship, I got an MPH, which is master of
24 public health, from the other Carolina. That's Chapel
25 Hill. Please don't hold it against me.

1 THE COURT: I won't.

2 APPLICANT ASSA'AD-FALTAS: But -- but as a
3 biostatistician, I wouldn't say that's enough of a sample,
4 but my record in pro se PCR is one out of one, which is
5 100 percent. My record in pro se defense is ten out of
6 ten, which is also 100 percent -- I'm sorry -- nine out of
7 ten, which is 90 percent.

8 That the other -- the other thing that I wanted very
9 importantly to bring to Your Honor's attention, again, two
10 things. The fact that she did not file false criminal
11 charges against me unless, and God forbid that it should
12 happen to you, but it happened to me, the threat of false
13 criminal charges is as damaging emotionally to me. It is
14 damaging. I wouldn't say as damaging emotionally as false
15 criminal charges have been -- been brought, but it is
16 damaging because I know that it can happen, because it
17 happened to me. So when someone made that threat, that --
18 that is -- that is emotionally damaging to me, because I
19 know it can happen.

20 In -- in a U.S. Supreme Court case, which I cannot
21 remember which one, but it said the threat of the sword of
22 Damocles is that it hangs, not that it drops. When you
23 have a sword hanging over your neck, the problem is that
24 it's hanging, not -- not that it's -- not that it has
25 dropped. So the problem is that she has threatened

1 criminal charges, not that she has brought them.

2 And related to that, you said that they open cases on
3 all files. That's not true. They do not open
4 investigations on all complaints. They may assign them a
5 number and they would say a -- a -- this does not meet our
6 criteria.

7 The most important thing is that, respectfully, Your
8 Honor is incorrect about PCR, and that is state law. I
9 gave you the case name, I think. Everyone can -- I don't
10 have the citation off the top of my head, but that was
11 written by now Chief Justice Beatty, and that was on
12 certiorari from the Court of Appeals. Hiott, that's H-I
13 -- H-I-O-T-T -- vs. State. And it said specifically that
14 in PCR, counsel is required to file, to argue all issues,
15 even frivolous ones. So all cases that you said about
16 criminal or civil or whatever in any part of the country
17 is in one heap, and PCRs in South Carolina are in another
18 heap. This is state law. And if your Honor's law clerk
19 can pull that case up, it's Hiott vs. State, and that's a
20 State Supreme Court case. And it specifically says in --
21 in -- in -- in civil -- in PCR cases ---

22 THE COURT: I'm listening. Go ahead.

23 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.
24 Counsel is required to brief all issues even if they
25 appear frivolous. So this is the law of this state, and I

1 cannot be denied it.

2 THE COURT: All right. Thank you.

3 Ms. McCallister, anything else?

4 APPLICANT ASSA'AD-FALTAS: I had one -- one -- one
5 more point, Your Honor.

6 THE COURT: All right. Go ahead.

7 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

8 In that order, it said that I may initiate PCR cases
9 pro se, and it also continues the fact that I may file pro
10 se motion to relieve counsel or motion to appoint counsel.
11 But, Your Honor, as a scientist, I look at the results.
12 And I -- again, just for the record, I was wanting to
13 bring Ms. Jessica Saxon and Mr. Robert Dudek, for them to
14 testify that I asked them to brief the additional
15 sustaining grounds and that they refused. And this is
16 important because if ---

17 THE COURT: Go ahead.

18 APPLICANT ASSA'AD-FALTAS: --- if PCR cases in the
19 state courts fail, the recourse is federal habeas. And
20 for federal habeas to happen, one has to have exhausted
21 state remedies by presenting all the issues to the state
22 court. That is the federal habeas law. So imposing on me
23 a lawyer who refuses to put forward all my PCR issues
24 damages me in federal court because it would default the
25 claims in federal court.

1 THE COURT: All right. This is what I'm going to do,
2 okay?

3 Anything else, Ms. McCallister?

4 MS. MCCALLISTER: No. Not right now, Your Honor. If
5 Your Honor is inclined to choose the stay option, I guess
6 I would like to be heard on that.

7 THE COURT: No. This is what I'm going to do. The
8 -- I am going to relieve Ms. Brewer as your lawyer. I'm
9 going to ask the clerk for whoever may be on the list to
10 appoint as attorney for Dr. Faltas in compliance with our
11 State Supreme Court's September 20, 2019, order. I find
12 that the motion to stay is not properly before the Court
13 at this time. The motion to be relieved is what is in
14 front of me today. And I'm granting that motion.

15 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

16 THE COURT: But I am appointing another lawyer. But
17 listen to me. Listen to me, okay? And, Ms. McCallister,
18 I want you to do this order for me, all right, relieving
19 Ms. Brewer.

20 And I'm doing this in large part based upon my review
21 of Dr. Faltas's motion, based upon more specifically the
22 emails back and forth between Dr. Faltas and Ms. Brewer,
23 which I believe would make it very difficult for
24 Ms. Brewer to continue to represent Dr. Faltas as we go
25 forward, as these matters go forward.

1 What I want in that order also, because our State
2 Supreme Court has said what it said in regards to
3 Dr. Faltas representing herself in here and that she is
4 precluded from filing any motions, et cetera, other than
5 an actual PCR and a motion to relieve counsel ---

6 APPLICANT ASSA'AD-FALTAS: Or appoint counsel.

7 THE COURT: Okay. --- that the newly appointed
8 counsel may file a motion to stay the proceedings, and
9 that will -- that -- at that point, that motion can be
10 properly before the Court. And in the interim, District
11 Court may rule on it, which makes it moot at that point,
12 okay? But I certainly believe that Dr. Faltas will have
13 to provide whatever supporting documentation to this newly
14 appointed attorney to properly argue the matter before the
15 Court so the Court at that time can make its decision on
16 whether or not to stay the proceedings or to go forward.
17 So I think that's the appropriate thing to do in this
18 case.

19 And, Ms. McCallister, I've kind of maybe rambled on a
20 little bit, but I think that the main things that need to
21 be in the order is that I'm granting Dr. Faltas's motion
22 to have Ms. Brewer relieved as counsel, that new counsel
23 is to be appointed within 30 days, that within 30 days
24 thereafter, newly appointed counsel may file a motion to
25 stay the proceedings pending the District Court's decision

1 on Dr. Faltas's motion for an injunction, and that
2 Dr. Faltas's motion to stay the proceedings is to be
3 placed on the next roster after the passing of that
4 60 days so that the motion to stay can be heard. All
5 right?

6 APPLICANT ASSA'AD-FALTAS: Thank you so much, Your
7 Honor. It's -- it's been a pleasure appearing before Your
8 Honor.

9 And may I say that when I represented myself pro se
10 in Judge Clifton Newman's courtroom, there was a lawyer
11 observing the entire trial out of that requirement that
12 they observe a trial, and also part of my closing argument
13 I saw was copied by other defense lawyers. So I think a
14 lawyer should represent his or her client as zealously as
15 I represent myself. And so, please, if I have been
16 overzealous, please take it the physician's ethic is to do
17 everything possible for the patient, and I think the
18 lawyer's ethic or the advocate's ethic is to do everything
19 possible for the client, even if the client is oneself.
20 So please, no offense ---

21 THE COURT: Back up a little bit from that
22 microphone, okay?

23 APPLICANT ASSA'AD-FALTAS: So please, no offense.

24 THE COURT: No -- no offense has been taken. I've
25 heard you out today, and I've ruled on -- and what I

1 believe to be an appropriate ruling in this matter. And I
2 hope you understand that.

3 APPLICANT ASSA'AD-FALTAS: I thank Your Honor very
4 much. God bless you and all the best in everything.

5 THE COURT: Now let me say this. Let me ask this,
6 Madam Clerk. And I know it's changed over. What is
7 y'all's appointment list? Because it's somewhat changed
8 in how we do appointments now. Because when I was
9 practicing law -- when I was practicing law, you had to
10 either sign up for civil appointments or criminal
11 appointments. And they've kind of taken that away now.

12 MS. McCALLISTER: Your Honor, there's a -- there's a
13 contract system now that OID oversees. And so there are,
14 I think, two, maybe three attorneys that have a contract
15 for postconviction relief hearings in the Fifth Circuit.
16 And so ---

17 THE COURT: Okay. Do you have any idea who those
18 lawyers are?

19 MS. McCALLISTER: I believe it's Ola Johnson, Timothy
20 Griffith and there may be a third, and I'm not sure who
21 that third person is.

22 THE COURT: Okay.

23 MS. McCALLISTER: And so, Your Honor, you're tasking
24 me with drafting this order, so I just wanted to clarify
25 that. If we could just have the clerk's office consult

1 with OID on who should be appointed, because I know that
2 Dr. Faltas has issues with a lot of the PCR attorneys, and
3 so I don't want to appoint someone who's then just going
4 to immediately move to be relieved.

5 THE COURT: Well, and I understand your concern
6 because I don't want to have to have a legitimate conflict
7 issue that would necessitate that at that point. So
8 Mr. Griffith, for instance, is not from Richland County.
9 He's from Sumter County, which would, I think, minimize
10 any potential conflicts.

11 I don't know where Mr. Johnson is from. Is he from
12 Columbia?

13 MS. McCALLISTER: Your Honor, I'm not sure. He -- he
14 may be -- his office may be in Kershaw. I'm not positive.

15 THE COURT: Okay. But it would probably be
16 beneficial at least to appoint a lawyer from outside of
17 Richland County that has not previously represented
18 Dr. Faltas or had a conflict in any -- or create conflicts
19 in any way at that point.

20 MS. McCALLISTER: And can I put some wording to that
21 effect in the order just so that we're all -- or do you
22 not want me to do that?

23 THE COURT: Give me what kind of wording you want
24 to ---

25 MS. McCALLISTER: I guess just that -- that the

1 clerk's office should consult with the Office of Indigent
2 Defense to determine someone from the contract list that
3 doesn't necessarily have to be a Richland County or Fifth
4 Circuit person. It could be anyone from the PCR list for
5 the state, I guess. Any circuit.

6 THE COURT: And I would even add in there that the
7 Court would ask that it be a PCR attorney outside of
8 Richland County ---

9 MS. McCALLISTER: Okay.

10 THE COURT: --- just to cut on -- cut down on the
11 possibility of any conflict.

12 APPLICANT ASSA'AD-FALTAS: Actually, that may
13 increase the possibility. There may be a better lawyer or
14 less conflicted lawyer in Richland County, so let's not
15 put that -- I'm just thinking out loud with Your Honor.
16 But remove the outside of Richland County because that
17 may, you know, narrow the ---

18 THE COURT: Well ---

19 MS. BREWER: Your Honor, my office is actually based
20 in York County so they already had to do this with me
21 before. I don't have that (inaudible). I'm sorry.

22 THE COURT: Do what? I'm sorry.

23 MS. BREWER: My office is in York County, so Indigent
24 Defense did have to go outside Richland County already for
25 this. So if that helps with the wording at all.

1 THE COURT: Well, just add some of that language in
2 there. And, I mean, I think that -- and, Dr. Faltas, let
3 me say this, okay? I've ruled in your case today how I
4 think -- in doing what I think's appropriate here for your
5 benefit, okay? And I will tell you that prior to coming
6 in here today that -- and in looking at -- I don't know
7 what I did with the case. I thought I brought it in here.
8 And I'm -- I'm gleaning -- and what I'm about to say is
9 I'm kind of gleaning from -- from what I've heard and what
10 I saw in your emails, okay? And what I'm referring to is
11 this City of Columbia vs. you, Dr. Faltas, which is
12 Supreme Court case 420 SC 28.

13 APPLICANT ASSA'AD-FALTAS: The published one?

14 THE COURT: Ma'am?

15 APPLICANT ASSA'AD-FALTAS: The published one? The
16 published opinion?

17 THE COURT: Yes, ma'am.

18 APPLICANT ASSA'AD-FALTAS: Yeah.

19 THE COURT: Okay. And let me just say this. I
20 understand that you clearly have a vested interest in your
21 cases, okay? I understand that and wouldn't expect
22 otherwise, okay? However, just as a doctor, a practicing
23 doctor who practices medicine ---

24 APPLICANT ASSA'AD-FALTAS: Not practicing. I'm
25 retired.

1 THE COURT: Ma'am?

2 APPLICANT ASSA'AD-FALTAS: Not practicing. Retired.

3 THE COURT: I know you're not practicing now. I'm
4 giving a generalization, so to speak ---

5 APPLICANT ASSA'AD-FALTAS: Yes, Your Honor.

6 THE COURT: --- with regards to doctors.

7 APPLICANT ASSA'AD-FALTAS: Yes. I'm -- just didn't
8 want to leave a false factual impression in anyway.

9 THE COURT: Well, in any event, what I'm getting at
10 is lawyers, just like doctors or you fill in the blank as
11 to whatever profession, or take away professions and put
12 in whatever type of employment, okay, each doctor, each
13 lawyer, each whatever it may be has other patients,
14 clients, employees, et cetera, that they have to deal
15 with. And I understand that your case is very important
16 to you, okay? But every lawyer, doctor, et cetera has
17 other clients, other patients that they are dealing with
18 day in and day out, okay?

19 And kind of give you an example here, okay? When I
20 was practicing law before I got elected to the bench, I
21 was in private practice from '01 until 2010 when I was
22 elected to the bench. And there were many -- most Sundays
23 after church I'd go to my office for a couple of hours.
24 And I could do in two hours enough work that would keep my
25 staff busy for about the whole week because nobody was

1 pulling at me, okay? But there were many times that I'd
2 go in my office. I tried to stay out of my office on
3 Saturdays to make that my family day, so to speak, okay?
4 But there were many days when I was in private practice
5 that I had to go to my office on Saturdays, especially
6 when I had to do a memo -- memorandum, a memorandum of law
7 or a brief or a very detailed motion, et cetera. And my
8 wife, whom I've been married to going on 26 years, okay,
9 but on many occasions, she would ask me you can't get that
10 done during the week. And my response always was from
11 8:30 in the morning until 5:00 every day, it's all about
12 putting out fires, okay?

13 And whether it be pulled to from one court to the
14 next, from meeting with one client to the next, from
15 returning phone calls every chance I got, whatever it may
16 be, I want you to understand that when a lawyer doesn't
17 call you back immediately, it's not a good assumption --
18 and it may be sometimes, okay? Sometimes it may be
19 avoiding a client. I get that. But just because a lawyer
20 doesn't immediately return a telephone call or reply to an
21 email doesn't always mean that they are trying to avoid
22 you, okay? Because a lot of times, because lawyers and
23 doctors and whatever profession it may be are so
24 overworked, that they can't deal with a particular small
25 fire until they're dealing with the bigger fires at that

1 time. And that small fire has to kind of sit there a
2 little bit until they have an opportunity to reply in some
3 way, shape, or form, okay?

4 So just please be patient. As I've heard said many
5 times, the wheels of justice turn slow, very slow.

6 APPLICANT ASSA'AD-FALTAS: And that's
7 unconstitutionally. There is -- there is a right to a
8 speedy trial. And if you look at that case, that
9 published case, the allegation is from September 2009.
10 And, you know, Your Honor, some PCRs got granted after the
11 falsely accused defendant had served the sentence. That's
12 stealing people's lives.

13 In medicine our first rule is do no harm. When
14 people tell me that the courts are busy, I'm sorry. My
15 answer is why were they not too busy bringing false
16 criminal charges against me? And until the court system
17 -- and I'm being honest with Your Honor. And you know
18 Jesus Christ gave the parable of the sower who sowed the
19 seeds. Some fell on rocks, some fell on sand, but some
20 fell on fertile ground. And I am -- I have to sow the
21 seeds of this complaint.

22 Why hasn't anyone in this entire system looked at why
23 false criminal charges have been knowingly -- knowingly
24 brought against me? Why hasn't anyone looked at the
25 prosecutor that took five days of a jury trial time and

1 objectively (indiscernible) 379 perjuries, documented
2 perjuries, not I say, they say, objective. The witness
3 said she was employed. I got to where she had been fired
4 at that period. Her witness pretended to have been a
5 veteran. I FOIA'd her veteran's record, and she had been
6 -- she pretended to be a veteran for two years in the
7 Navy. She was only three weeks in the reserve.

8 She said I was flashing, using the camera. It was
9 high noon. The shadows on the pictures show which way the
10 sun was and which -- all of this is objective. No one has
11 looked at why a prosecutor brought false criminal charges
12 against me for my false accusers to get advantage in civil
13 litigation. No one has done that. No one has looked at
14 why the Municipal Court yelled at me and told me to go get
15 psychiatric evaluation when five psychiatrists had said
16 there is nothing wrong me. And Judge Gravely finally,
17 after -- after eight years had the courage to put that in
18 the order.

19 No one has looked at the abuse of prosecutorial power
20 or -- or so-called judicial immunity or the right to
21 contempt. No one has looked at that and -- because they
22 pretend to be too busy. Doesn't that take time? Doesn't
23 it steal people's lives when the State Supreme Court says
24 that bolstering and some comments in closing by
25 prosecution are not only illegal, but unacceptable? But

1 nothing, nothing gets done to the prosecutor who says this
2 inflammatory closing remarks, and the poor innocent
3 defendant gets to spend 20 years in prison unless
4 exonerated.

5 I am sorry. I will not be lectured about how busy a
6 court system is when that court system was not too busy to
7 bring so many false criminal charges against me. And I
8 say that out of respect for Your Honor because Your Honor
9 believes that I am inconsiderate of how busy people are.
10 I am not. I have seen different.

11 THE COURT: I'm -- I'm not -- I don't think you're
12 being inconsiderate, and hopefully at the appropriate time
13 all of these issues will be looked at for you. And I wish
14 you the best of luck, okay?

15 APPLICANT ASSA'AD-FALTAS: And in your career on the
16 bench, when you come across a prosecutor who's abusing his
17 or her powers, please, this is a plea from me, from
18 someone who has been the victim, use your judicial duty to
19 check that prosecutor, because innocent people end up
20 losing their lives or parts of their lives. Nothing --
21 nothing, not federal habeas, not anything can bring back
22 the 20 years or 30 years or even people on the verge of
23 death row who have been wrongly convicted.

24 THE COURT: All right. Thank you, Doctor.

25 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

1 God bless you.

2 MS. McCALLISTER: Your Honor, I'm sorry. I just have
3 one more clarification ---

4 THE COURT: Okay.

5 MS. McCALLISTER: --- for this order.

6 The new counsel is to be appointed within 30 days.
7 And then are you directing new counsel to file a motion to
8 stay, or the new counsel has 30 days to meet with
9 Dr. Faltas and decide if they believe a motion to stay is
10 appropriate?

11 THE COURT: I think that's the appropriate language
12 that needs to be in there.

13 MS. McCALLISTER: Okay, okay.

14 THE COURT: And I don't ---

15 APPLICANT ASSA'AD-FALTAS: So file in 30 days? File
16 the stay in 30 days?

17 THE COURT: Yeah. I mean, I don't think that --
18 based upon what Dr. Faltas has said to me today, I don't
19 think -- I mean, I think it would be appropriate to file
20 that motion.

21 MS. McCALLISTER: You think it would?

22 THE COURT: Yeah.

23 MS. McCALLISTER: So the language should direct them
24 to file the motion.

25 THE COURT: Yeah. I mean, I don't see -- I don't see

1 any harm in doing that.

2 MS. McCALLISTER: Okay. I just want to make sure
3 that I'm writing the order correctly and understanding
4 what Your Honor is saying.

5 THE COURT: And that covers -- it covers -- it covers
6 the issue of what the Supreme Court has directed the
7 circuit courts to do. I'm complying with that order and
8 appointing new counsel. And Dr. Faltas, I think, has
9 raised a legitimate issue here on a stay. And so I think
10 it ought to be filed, which would give you all a timely --
11 you know, a period of time to timely respond to any such
12 motion or to that motion ---

13 MS. McCALLISTER: Okay.

14 THE COURT: --- and give you an opportunity to be
15 heard on it, okay? Thank you.

16 APPLICANT ASSA'AD-FALTAS: God bless you, Your Honor.
17 Thank you, thank you.

18 THE COURT: Thank you. Have a good day.

19 (Pause in proceedings.)

20 THE COURT: I didn't ask Ms. Brewer. Did y'all
21 supply copies of these files to Ms. Brewer prior to
22 today's hearing?

23 MS. McCALLISTER: I didn't make a packet -- I didn't
24 make a packet for Ms. Brewer, but this is all pleadings
25 that Ms. Brewer should have received when she was

1 appointed on the case.

2 THE COURT: All right. We'll do this.

3 MS. McCALLISTER: I can make sure that the new
4 attorney gets the packets.

5 THE COURT: Here's what I don't want. Here's what I
6 don't want. I don't want there to be a lag in time from
7 this appointment to a new attorney getting these
8 documents, which in turn could be shared with Dr. Faltas.
9 Because Dr. Faltas did raise today that she hadn't seen
10 that, and she objected to it being handed up to me, which
11 I understand that, okay? I just don't want there to be --
12 so as soon as I sign this order, I want those packets
13 forwarded to the new attorney immediately.

14 MS. McCALLISTER: Okay.

15 THE COURT: Okay?

16 MS. McCALLISTER: Yes, sir.

17 THE COURT: So that there's no lag in time there.

18 APPLICANT ASSA'AD-FALTAS: I cannot tell you enough
19 how I appreciate Your Honor. And I'm very grateful.

20 THE COURT: Well, I want you to have your day in
21 court, you know, and I think this is the appropriate
22 manner to at least us getting there, okay?

23 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

24 THE COURT: And I don't know that I'll hear it, but
25 it's going to get there.

1 APPLICANT ASSA'AD-FALTAS: God bless you. God bless
2 you.

3 THE COURT: All right. Good luck to you, Doctor.

4 APPLICANT ASSA'AD-FALTAS: Thank you, Your Honor.

5 THE COURT: And make sure -- well --

6 APPLICANT ASSA'AD-FALTAS: Check the order with
7 Ms. Brewer and me?

8 THE COURT: Well, the order will be shared with --
9 with your new lawyer, and they can in turn give you a
10 copy.

11 APPLICANT ASSA'AD-FALTAS: I mean the draft? The
12 draft, can she email me the draft so it won't be ex parte?

13 THE COURT: You can send her a draft.

14 APPLICANT ASSA'AD-FALTAS: The draft of --

15 THE COURT: Well, just send it to her new -- here's
16 what will happen, okay? If there is an objection to -- to
17 my order, and I put on the record what I want in my order,
18 okay, and you've heard what I've told her to put in my
19 order, when -- when -- when that order -- I'll look at it
20 and make sure it complies with what I've said.

21 APPLICANT ASSA'AD-FALTAS: Okay.

22 THE COURT: If it doesn't comply with what I've said
23 in your presence here today, then I'm not going to sign
24 the order.

25 APPLICANT ASSA'AD-FALTAS: All right.

1 THE COURT: And that order will be sent to your new
2 lawyer. And if there are any issues that need to be
3 addressed, they can file a motion on that.

4 APPLICANT ASSA'AD-FALTAS: Yeah. It's just I was
5 just -- you know, I didn't want the order -- the draft to
6 be ex parte just in case ---

7 THE COURT: It's not. It will be sent to your new
8 lawyer, too.

9 APPLICANT ASSA'AD-FALTAS: Okay. Thank you.

10 MS. MCCALLISTER: Do you want me to copy Ms. Brewer
11 or do you want me to copy Dr. Faltas when I send you the
12 order?

13 THE COURT: Well, Ms. Brewer is still your lawyer
14 until I sign this order.

15 APPLICANT ASSA'AD-FALTAS: So she can get a copy of
16 the draft.

17 THE COURT: She'll get a copy of it as well, okay?

18 APPLICANT ASSA'AD-FALTAS: Yes. This is great.
19 Thank you, Your Honor. Thank you.

20 THE COURT: Thank you.

21 APPLICANT ASSA'AD-FALTAS: God bless you.

22 (WHEREUPON, proceedings concluded at 11:27 a.m.)
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF RICHLAND)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 digitally recorded proceedings had from the DCRP, Digital
12 Courtroom Recorder Project, and evidence introduced in the
13 trial of the captioned case, relative to appeal, in the
14 Court of Common Pleas for Richland County, South Carolina,
15 on the 20th day of February, 2020.

16 I do further certify that I am neither of kin,
17 counsel, nor interest to any party hereto.
18

19 June 21, 2021
20
21

22 Cheryl A. Smith

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25