No.

IN THE SUPREME COURT OF THE UNITED STATES

C. Collie,
Petitioner,

v.

SCCLC
Respondents.

APPENDIX

C. Collie
Post Office Box 187
Sullivans Island, SC 29482-0187
843.883.3010

Appendix

P.

1. Petition for Rehearing denied by Order dated September 21, 2018.

2. Order dated May 25, 2018.

3. Petition for Rehearing.

The Supreme Court of South Carolina

In the Matter of Cynthia E. Collie, Petitioner.

Appellate Case No. 2016-000484

ORDER

By order dated May 25, 2018, we denied petitioner's petition for reinstatement to the practice of law. Petitioner has filed a petition for rehearing. The petition is denied.

C.J.

J.

J.

J.

J.

Columbia, South Carolina

September 21, 2018

cc:
John S. Nichols, Esquire
Deborah Stroud McKeown, Esquire
Cynthia E. Collie

The Supreme Court of South Carolina

In the Matter of Cynthia E. Collie, Petitioner.

Appellate Case No. 2016-000484

ORDER

In November 2014, petitioner was suspended from the practice of law for two years. *In the Matter of Collie*, 410 S.C. 556, 765 S.E.2d 835 (2014). Petitioner has filed a petition for reinstatement pursuant to Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules. The petition is denied.

C.J.

J.

J.

J.

J.

Columbia, South Carolina

May 25, 2018

cc: John S. Nichols, Esquire
Deborah Stroud McKeown, Esquire
Chalmers Carey Johnson, Esquire
Cynthia E. Collie

THE STATE OF SOUTH CAROLINA
In the Supreme Court

App. Case No. 16-000484

In re Collie, Petitioner

Petition for Rehearing

By way of introduction, there have never been any allegations of harm to any client. There have never been any client complaints. The petitioner is a practicing physician who provides high quality, cost-effective, compassionate, personalized care to each individual patient. Like the members of the Committee who contributed unpaid hours to this and other endeavors, the petitioner tries to make a positive contribution to the community. The physician is well-trained, fully licensed, fully insured, and has patients requesting care and services from the petitioner, their physician of choice. The physician has done nothing more than defend the constitutional right to practice one's profession and defend patients' right of access to their physician of choice. Any well-trained physician would and should object. See expert opinion affidavit attached. But for the unconstitutional retroactive application of the revised S.C. Code 15-36-10, hereinafter revised statute, there would be no complaint to the Commission. The allegation involved a purported violation of the revised statute which by its express terms, effective date, and controlling precedent is inapplicable. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). Importantly, it is noted that the Scope of the RPC's, Rule 407, SCACR, expressly provides, "The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of

the facts and circumstances as they existed at the time of the conduct." Rule 407, SCACR. Thus, the RPC's expressly disavow application of the revised statute in this case because it was not even in effect at the time of the alleged conduct. Though the revised statute was clearly inapplicable, that improper order tainted a second and third sanctions order and the inapplicable revised statute was used to deny meaningful judicial review of those orders, thereby denying objective, meaningful appeal. Novel issues are raised, including but not limited to, the reasonable attorney standard which is not fair notice to the public at large or to parties. These issues have been raised but have not been addressed. The record reflects petitioner's counsel, as a reasonable attorney, drafted/filed the claims and certified the claims were not frivolous. See *In re Ruffin*, 363 S.C. 347, 610 S.E.2d 803 (2005) (Court found lawyer did not violate Rule 3.1 in filing a meritless complaint because there was no clear and convincing evidence of the misconduct; the lawyer relied on the advice of his attorney). Counsel, however, was not reported to the Commission and was not sanctioned. Pursuant to the South Carolina Rules of Court, statutory law, case law, and State and federal constitutional law, petitioner enters this petition for rehearing.

Petitioner respectfully submits the attached affidavit in support. Conflicted Deputy D.C. Seymour admitted breach of trust in her official capacity and breach of confidentiality. She was reported to the Commission which routinely prosecutes the same or similar misconduct. In apparent selective non-enforcement, Deputy D.C. Seymour was not prosecuted, however, and should have been disqualified herein. Disqualification of Deputy D.C. Seymour is proper, including but not limited to, if an objective observer might reasonably question her impartiality, if there is even an appearance of impropriety, if there is personal bias or prejudice, and/or if there are other reasons under the circumstances to question neutrality. The question is not whether there is impartiality in fact, but rather, whether reasonable men/women might question impartiality under the circumstances. Under Rule 506, SCACR, Canon 3(E)(1), staff attorneys, including Ms. Seymour, are disqualified in a

proceeding in which impartiality might reasonably be questioned, including but not limited to, instances where the staff attorney has a personal bias or prejudice concerning the matter. See *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998). Under Rule 506, SCACR, Canon 2, staff attorneys, including Ms. Seymour, shall avoid even the appearance of impropriety. Staff attorneys, including Ms. Seymour, may not use a government office to affect pending litigation. See excerpt of transcript documenting ex parte contact with the Presiding Judge and improper meddling in pending litigation by ODC at a time when there was no complaint and no notice of any complaint. Staff attorneys, including Ms. Seymour, may not use a government office to settle her own vendetta or to advance private interests of other attorney attorneys, in this case, malpractice Defendant James Y. Becker in concert with the Defendants he himself sued in Federal Court on petitioner's behalf. See attached copy of Federal Court order establishing Defendant Becker's malfeasance in failing to timely appeal loss of the preliminary injunction with reversal of the status quo causing irreparable harm.

By way of analogy, consideration of case law in the judicial setting supports disqualification of Deputy D.C. Seymour. Where an affidavit alleges conduct and/or statements on the part of a judge which, if true, show bias and/or prejudice on the part of the judge, it is an abuse of discretion if that judge does not withdraw from the case, even though he or she believes the statements are not correct or that the meaning attributed to them by the party seeking disqualification is erroneous. The judge does not pass upon the truth or falsity of the facts alleged in the affidavit but rather whether reasonable men/women might question her impartiality under the circumstances. The fact that the judge in his or her own mind does not believe that he/she is prejudiced does not prevent disqualification if the motion and affidavit reflect prejudice. See e.g. *Berger v. United States*, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921). It is not sufficient for a party seeking disqualification to simply allege bias; the party must show by affidavit some evidence of bias or prejudice. *Mallett v. Mallett,* 323 S.C. 141, 473 S.E.2d 804 (Ct.App.1996). The attached affidavit establishes Deputy D.C. Seymour's impropriety in fact, bias,

and/or prejudice. Accordingly, Deputy D.C. Seymour should have been disqualified and the petition for rehearing should be granted.

Further, by analogy, Deputy D.C. Seymour shall be disqualified in an action in which she is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or his attorney as to render it improper for him to sit on the appeal therein. C.J.C. Canon 3. A staff attorney may be disqualified for any of the aforesaid reasons or any party may move for such disqualification. The motion and supporting affidavit speak for themselves and **the only question involved is whether, under the facts alleged, reasonable men/women might question her impartiality**. *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114 (S.C. 2004) (emphasis supplied). Disqualification is proper. The facts and affidavit are legally adequate and, therefore, require disqualification herein because they state facts from which it may reasonably be inferred that Deputy D.C. Seymour has bias or prejudice that will prevent her from dealing fairly with the party seeking disqualification. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998); *Berger v. United States*, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921); S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, V, VII, and XIV.

In this case, staff attorney B.M. Seymour was rebuffed and rejected by the Supreme Court when she included improper relief and misrepresented restitution in a default order for which no notice of restitution had been given. This misconduct essentially characterizes the way she mishandled the matter all along. The Supreme Court verbally reprimanded her for trying to make the Supreme Court a "collection agency" in violation of legal authority and controlling precedent. Bless her heart, Ms. Seymour is not one to take no from her bosses on the Supreme Court and again improperly sought to make this Honorable Court a collection agency for private parties. Federal law, by analogy, is instructive. "There is another way to look at the case, however: as one in which the losing litigant

appeals from a ruling by Judge X to an appellate panel that includes Judge X; and it is considered improper--indeed is an express ground for recusal, see 28 U.S.C. Sec. 47--***in modern American law*** for a judge to sit on the appeal from his own case. On this ground the Fourth Circuit held in Rice that section 455(a) required the district judge to recuse himself. [*Rice v. McKenzie, 581 F.2d 1114, 1116 (4th Cir.1978)*.] We agree with this result. Judge Mills was being asked to find that he had affirmed an unconstitutional conviction, and, implicitly, that by doing so he had become complicit in sending Russell to prison in violation of Russell's constitutional rights." (Emphasis supplied.) *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989). From the *Russell* case, it is considered improper for a judge to sit on the appeal from his own case in whole or in part because of lack of objectivity. *Id.* In other words, a reasonable person might question impartiality because of the vested interest in not being reversed and/or lack of objectivity. Similarly, having been rejected and admonished by the Supreme Court in this case, Ms. Seymour's lack of objectivity supports this petition for rehearing and supports reversal. Due in whole or in part to a pattern and practice of similar wrongdoing, she has been deemed unworthy of continuing at O.D.C. Her impartiality is reasonably questioned herein supporting disqualification. The circumstances and supporting affidavit attached herein state facts from which it reasonably may be inferred that Deputy D.C, Seymour had a bias or prejudice that prevented her from dealing fairly herein. Respectfully, it is submitted that under these circumstances, staff attorney B.M. Seymour disqualified herself from participation in this matter supporting rehearing and reversal.

Moreover, petitioner respectfully objected to testimony of conflicted Ms. Seymour which she chose to interject in the return and at the hearing. The Commission and ODC have expressly admitted that the petitioner cooperated. Specifically, the false charge of lack of cooperation was denied. Petitioner respectfully submits that the record reflects Ms. Seymour's pattern and practice of mischaracterization and frank falsehoods, including but not limited to, mischaracterizing defending as lack of cooperation. Certified copy of the record available on request. Petitioner objects to staff

attorney B.M. Seymour's attempts to be a witness and insinuate testimony as counsel at the hearing which is her pattern and practice in this case all along. Pursuant to controlling precedent and new case law in *Brooks (infra)*, Ms. Seymour has thereby disqualified herself as counsel by insinuating testimony. The petition for rehearing should be granted. See *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV; *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

Further, in Footnote 1 of her return, staff attorney B.M. Seymour reveals a complete disconnect with the basic tenets of fundamental fairness and due process. The record reflects Ms. Seymour sought improper default multiple times. Certified copy of the record available on request. Footnote 1 is based on a default order. By definition, a default order is not adjudicated on the merits and its findings cannot be used as such. *See Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504 (1986); *Davis v. Lunceford*, 279 S.C. 503, 507, 309 S.E.2d 791, 793 (Ct. App. 1983). Staff attorney B.M. Seymour made material misstatements of law and fact. Accordingly, the petition for rehearing should be granted.

Plaintiff asserts the American Bar Association (ABA), after thorough and well-documented review of the Commission, pointedly noted lack of oversight for ODC (Office of Disciplinary Counsel)

as staffed by Deputy D.C. Seymour and strongly recommended adequate oversight. See ABA report at SCSC website. The record reflects abundant evidence of staff attorney B.M.Seymour's bias and need for oversight; Federal and State constitutional protections mandate her disqualification given that manifest bias. Accordingly, the petition for rehearing is respectfully submitted.

By analogy, this matter essentially amounts to professional capital punishment, double jeopardy for the same charges, denial of equal protection, unlawful taking by the State at the behest of, for the benefit of, and in collusion with untrustworthy legal malpractice defendants, and denial of substantial procedural and/or substantive due process to the petitioner's extreme prejudice. The petitioner is denied the right to cross examine witnesses, to present evidence, and to call witnesses. *See Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Certified copy of the transcript available on request. The petitioner respectfully objects and requests petition for rehearing. Deputy D.C. Seymour disqualified herself; the expert opinion evidence regarding forgery on behalf of ODC and on behalf of the State requires disqualification. See attached expert opinion evidence of forgery. Deputy D.C. Seymour has not denied it. The "cutting-edge" IT Department of the South Carolina Court System should have and would have established B.M. Seymour's wrongdoing; it is unclear why Former Chief Justice Toal declined to disclose pertinent information. Failure to implement the oversight recommended by the A.B.A. enabled Deputy D.C. Seymour's pattern and practice of wrongdoing. See the ABA report on the S.C. Supreme Court website. Accordingly, the petition for rehearing is respectfully requested. See *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV; *Hicks v. Feiock*, 108 S.Ct. 1423, 485

U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

Significantly and materially, this Honorable Court granted petitioner's counsel's timely request to reschedule the hearing for reinstatement in order to make out-of-state travel arrangements to attend. Former staff attorney B.M. Seymour used undue influence to have the Committee reverse the Supreme Court's order and deny counsel's reasonable request. The record reflects B.M. Seymour's separation from O.D.C. was imminent suggesting parting personal vendetta. Personal vendetta is also supported by B.M. Seymour's fraudulent misrepresentation to the Committee and the public of incapacity. The petitioner is prejudiced thereby. The outcome should have and would have been different. B.M. Seymour's misconduct is beneath the Committee and the great State of South Carolina and this Court should so find.

CONCLUSION

In sum, conflicted B.M. Seymour wrongfully introduced her own testimony and, thereby, disqualified herself. Denial of substantial procedural and/or substantive due process including, but not limited to, the aforementioned wrongdoing, resulted in denial of meaningful opportunity to be heard. The Commission denied the right to cross examine witnesses, to present evidence, and to call witnesses. Certified transcript available on request. The petitioner is prejudiced for the foregoing reasons and because her disqualification should have and would have led to a different result. For substantial justice affecting substantial rights, the petitioner respectfully enters this petition for rehearing.

Respectfully submitted,

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Additional material from this filing is available in the Clerk's Office.