

23-6613 **ORIGINAL**
NOT TBA

**IN THE
SUPREME COURT OF THE UNITED STATES**

Kathy R. Allen - *PETITIONER*

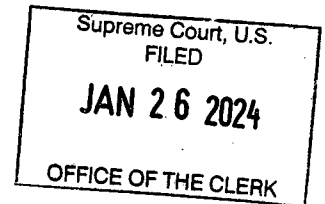
VS.

Arthur L. Allen (Deceased)

[sic] Steve R. Allen

Anthony A. Klish

Arthur L. Allen et al.[sic] - *RESPONDENT(S)*



**ON PETITION FOR WRIT OF CERTIORARI
To The Supreme Court Of North Carolina (NCSC) #84P23**

PETITION FOR WRIT OF CERTIORARI

A handwritten signature in cursive script that reads "Kathy R. Allen".

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QUESTIONS PRESENTED

- 1: Did the NCCOA and NCSC – Improperly Deny Appellant’s Motions for R. 33 Notice of Representation or was violation of the appellate rules and is of National Interests to Court Litigation and to the Citizens of North Carolina
- 2: Did the NCCOA and NCSC – Improperly Deny Appellant’s R. 38 Motion for Party Substitution or was violation of the appellate rules and is of National Interests to Court Litigation and to the Citizens of North Carolina
- 3: Did the NCCOA and NCSC – Improperly Deny Appellant’s Motion for Mediation/Arbitration or was violation of the appellate rules and is of National Interests to Court Litigation and to the Citizens of North Carolina
- 4: Did the NCCOA and NCSC – Improperly Grant Appellees’ Motion to Dismiss Without Providing an Analysis or Opinion or Determine the Merits or Material Facts and Violates at Least the 14th Amendment Due process, and U.S. Code. 1983 and is of National Interests to Court Litigation and to the Citizens of North Carolina
- 4A: Did the NCCOA and NCSC Commit Reversible Error in the Dismissal as a U.S. Code. 1983 Violation (But Appellant also Reserves This Violation as a Separate Federal 1983 Claim) and Wasn’t NCCOA’s Conduct a violation of at least N.C. Constitution Article 1 Sec. #1, 18, 19, and 25 and is of National Interests to Court Litigation and to the Citizens of North Carolina
- 5: Did the NCCOA and NCSC’s Orders Violate Constitutional Rights and N.C. Appellate Rules in providing no opinions and NCSC do so by N.C. G.S. § 7A-30 or § 7A-31 for Affirming or Dissenting Opinions or in providing no opinions and is of National Interests to Court Litigation and to the Citizens of North Carolina

PARTIES TO PROCEEDINGS

Kathy R. Allen is the Petitioner and filed the WCSC 2020 Caveat for her mother's N.C. estate and administration of it for its property after her sibling Jay K. Allen filed a 2017 Caveat that was denied January 6, 2020 Order.

Arthur L. Allen [sic deceased] is Respondent 1 and Petitioner's oldest sibling who was the personal collector for their mother's estate and 'Will' but himself passed in late 2020. His wife Mary Flager Allen is supposedly his estate's personal collector, but failed to appear or be officially represented in any of the cases.

Steve R. Allen is Respondent 2 and another of Petitioner's sibling who was a party to the 2017 Caveat and continued being named as a party into the Petitioner's 2020 Caveat for their mother's estate and 'Will'.

Jay K. Allen is not a party to the cases on this writ but is another of the Petitioner's sibling who filed the 2017 Caveat on their mother's estate and 'Will'. He and the Caveat he filed are discussed in some of the arguments' discussions and has his own pending appellate options for it.

RELATED CASES AND HEARINGS

Wake County Superior Court (WCSC), Raleigh, North Carolina for the case #16-E-01390. *Kathy R. Allen v. Arthur L. Allen*, [sic] Steve R. Allen, *Anthony A. Klish Caveat filed February 13, 2020* Judgment entered by Judge Rozier November 18, 2021 granting Respondents' motion to dismiss (MTD)

North Carolina Court of Appeals (NCCOA) #22-276 *Kathy R. Allen v. Arthur L. Allen*, [sic] Steve R. Allen, *Anthony A. Klish* for its February 7, 2023 and last two Orders dated March 3, 2023 Judgment dismissed the appeal granting Appellees' MTD

North Carolina Supreme Court (NCSC) #84P23 *Kathy R. Allen v. Arthur L. Allen*, [sic] Steve R. Allen, *Anthony A. Klish* for its September 57, 2023 Order Judgment denied Appellant's N.C.G.S. § 7A-30 notice of appeal and N.C.G.S. § 7A-31 discretionary review for the NCCOA #22-276 Order

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully asks this Court for and to grant this writ of certiorari and in doing to review the Orders of the N.C. Court of Appeals (NCCOA) case #22-276 and N.C Supreme Court (NCSC) the highest state court's case #84P23 as national importance for court litigation for N.C. citizens, U.S. citizens, state courts, state supreme courts and for North Carolina General Statutes ("N.C.G.S"/"NCGS"), rulings for their compliance or violations, N.C. Appellate Courts, and Federal Rules of Civil Procedure, and Federal Rules of Appellate Procedure (FRAP), U.S. Constitution. Clearly by not doing so the Orders in this U.S.C. 1257(a) Petition among other things deprives the Appellant of and violates the Appellant's Fourteenth Amendment rights and due process to have her appeal heard for the N.C. Wake County Superior Court ("WSCS")' Caveat for case #16-E-01390 that ultimately was filed against the Appellees for their handling of the Appellant's mother's estate matters and these appellate courts' (NCCOA/NCSC) disposition of the appeals filed for it with them after the Superior Court dismissed it.

OPINIONS

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix to the petition and is

☒ None not a federal court case

The opinion of the United States district court appears at Appendix to the petition and is

☒ None- not a district court case

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at

Appendix C to the petition and is

☒ reported at ; No opinion but Order has sent to West Publishing - (By Email) Lexis-Nexis - (By Email) and is among the questions on review or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the NC Court of Appeals and Wake County Superior Court court appears at Appendix A and B to the petition and is

☒ reported at ; None was provided and is among the questions on review or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

Neither the NCCOA for its February 7, 2023 Order (*Appendix A* p. 2) nor NCSC for its September 5, 2023 Orders (*Appendix C* pp. 2-4) filed any opinions for the cases' dismissal. This is among the questions the Petitioner finds of not having a proper day-in-court for her 2020 Caveat for #22-276 appeal and in not providing any analysis or opinions for use in the arguments in the N.C.S.C. § 7A-30 and § 7A-31 filings. Based on that alone this Court should and must rescind, reverse, and remand these Orders as violation of constitutional rights and due process.

See the U.S. Supreme Court "Rule 16... Disposition of a Petition for a Writ of Certiorari...Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record

and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it....” or by the N.C. App. R. 3 and §7A-30 and –7A 31 for appeals. See the *Supreme Court Rules of the Supreme Court of the United States January 1, 2023* “....Rule 14.(d)... Citations of the official and unofficial reports of the opinions and orders....”

By Rule 14(d) the opinion was to be used for this Petition. But when the Orders such as these are void of the opinion state courts and the NCCOA who failed to provide it clearly violates the appellate rules. Being so there is none to provide in this section of the Petition. Being so later the NCSC in its September 5, 2023 Order (*Appendix C* pp. 2-4) just mooted several pending motions on the docket with this in it “....by order of the Court in conference, this the 30th of August 2023.”...” and did not provide what ‘in conference’ means or who was or the ‘judge-panel’ or anyone who was in attendance or was deciding this Order—just seemingly a robo-signed Order with no opinion or analysis and was clearly was just to clear the NCSC docket filings. –questions it as robo-signed and this court has an opportunity to review this as a procedural defect, and do so state courts’ and national ’s eFiling systems do not send for bogus Orders—indeed automation has provided that such could happened and just ‘kick’ cases and Orders out of the eFiling system as dismissed without the proper review or due process of human intervention.

This NCSC Order also purported to include service copies to West Publishing (By Email), Lexis-Nexis-(By Email) and to all the parties on the appeal (including Appellee1’s wife’s name—but no E-mail—supposedly then it must have been by mail) and (who we know as in the Petition’s arguments below Appellee1 was deceased, and we

know by R. 33 were unrepresented, and no one made an appearance for or by either by R. 38). Being so this Petition's cases cited are those of the Petitioner's reasons why this Court should and must grant this writ and are among why the Orders are violations of due process and contrary to the appellate and the N.C. Appellate rules, the rules of law for state courts and the U.S. Supreme Court's (this Court) decisions.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was .

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: , and a copy of the order denying rehearing appears at Appendix .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 5, 2023.

A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted

to and including January 27, 2024 (date) on November 30, 2023 (date) in

Application No. 23A490.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

The U.S. Constitution Article Section 1 Fourteenth Amendment ("14th") provisions apply to this Petition and provides "....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...." U.S. Const., art. III, § 2 provides in pertinent part: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority....In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.".

The U.S. Constitution Article Section 1 "....Including Privileges and Immunities Clause.... *Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety....the right to sue in courts, civil rights clause....* A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury.... The Fourteenth Amendment made it illegal for a state to pass laws "which...deny to any person within its jurisdiction the equal protection of the laws...."

N.C. CONSTITUTION

By Article IV of the Constitution of the State of North Carolina for judicial members and deprived the Appellant (as an aggrieved) of rights secured thereunder to the opinion, the request to provide it and in violating the N.C. Constitution Article I among them § 1, 7,18,

19, 21, and § 25 deprived the Appellant of her civil rights and due process in the appeal #22-276 and #84P23 cases' litigation and being so such rulings are of national interest for courts and this Court for litigation—and to remove the prejudice in the judicial process before such appeals and to such willful failures of paid attorneys who ignore their duty to speak to correct procedural errors and injustice as a whole.

OTHER RELEVANT FEDERAL RULES OF CIVIL PROCEDURE (FRCP)

The lower court (WSCS) by N.C.G.S. 1A-1.Rule 52(a)(1) and both of the appellate court's Orders also are violation of see "[Federal Rules of Civil Procedure] Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings.(a) Findings and Conclusions.(1) *In General*. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58...."

FACTUAL BACKGROUND WCSC DISMISSAL

Petitioner, Kathy R. Allen, is having to proceed *pro se* hereby files this Petition to the U.S. Supreme Court by U.S.C. § 1257(a) for review. This case began as a Wake County Superior Court ("WCSC") Caveat for case #16-E-01390 (February 13, 2020 and affidavits of service filed with Superior Court o/a April 16, 2020. It was then filed as NCCOA case #22-276 appealing from it and as WCSC Judge Rozier's November 18, 2021 Order for it. After a few months of Coronavirus delays it was finally calendared for August 3, 2020 for a hearing, but was added to the hearing for Appellant's sibling's' 2017 Caveat (which has its own pending matters for an appeal). Appellant sent documents and

E-mails to the trial court coordinator indicating both Caveats were separate filings and should be ruled as such (which eventually prompted additional E-mails post-hearing on them. But at the August 3, 2020 hearing the presiding WCSC Judge (Collins) told the Appellant to provide the questions (and things) for her Caveat to the senior resident judge (which she provided and did going forward) and lead to a hearing for it on November 16, 2021 and Judge Rozier later dismissed on November 18, 2021 granted the Appellees' Motion to dismiss (MTD)) among it suggesting a statute of limitations (SOL) purported by Appellees. The NCCOA #22-276 appeal followed. After it was dismissed the N.C. Supreme Court appeal #84P23 was filed, and this U.S.C. 1257(a) Petition followed.

When Rule 52 motions are sent requesting the Rule 52 findings of fact, and in the NCCOA and NCSC served the motion to both courts by eFiling and E-mails, they should be provided, and so should the opinion or similar analysis for the dismissals—not just ignore or deny them, which questions the courts' attention to them or them as bogus and *robo-signing* Orders. The #16-E-01390 November 18, 2021 Order on appeal did not do so and non-compliant with the local and N.C. App. Rules 'proper day in court' for the estate or to the merits of the Caveat to have her mother's 'Will' and the intentions of the 'Will' to be determined by any proper proceedings or by the jury trial requested in the Caveat. See *Kinsley v. Ace Speedway Racing, Ltd.*, 284 N.C. App. 665, 877 S.E.2d 54, 2022 NCCOA 524 (N.C. Ct. App. 2022) “....W]here evidence in the record shows....noticing....”

Appellees statements are not the law and do as did these and their filings include misrepresentations or to the merits of case (e.g. suggesting it was untimely) these should be determined as material facts, but were and yet to be determined. The #22-276 appeal

followed and are questions for review by this Court for its importance in litigation and to court rulings that affect litigation of cases by Rule 12(b)(6) and Rule 52.

PROCEDURAL BACKGROUND

NCCOA AND NCSC APPEALS

This Petition is for the dismissal of the appeal for the WCSC #16-E-01390 dismissal of Caveat2 to (1) North Carolina Court of Appeals 10th District North Carolina Appellate Court at Raleigh, NC #22-276 case and (2) NCSC case #84P23 for the N.C.G.S. § 7A-30 notice of appeal filed June 20, 2023 and the July 12, 2023 motion for an extension until September 7, 2023 to file the N.C. App. R. 28 brief for the NCCOA rulings (*Appendix A*) among it for its:

- (1) March 27, 2023 Order denying Appellant's Motion to Hold April 11, 2023 Oral Arguments,
- (2) May 4, 2023 Order that granted the Appellees' MTD (*Appendix A*),
- (3) The last two NCCOA Orders for #22-276 dated June 6, 2023 for *en banc* rehearing, and
- (4) The Order for the NCCOA motion to stay the appeal until it provided an opinion.

The NCCOA filed May 4, 2023 and June 6, 2023 Orders for the case #22-276 on appeal provided no opinion (thus are contrary to the appellate rules) and the N.C. Appellate Rule 32 for the mandate and had not filed it by August 4, 2023 when the Appellant timely filed the NCSC-R printed record for case #84P23 for the #22-276 appeal of WCSC Judge Rozier's November 18, 2021 Order that granted the Defendants' MTD including in it and purporting a Rule 12(b)(6) and on the SOL. But a proper review by the NCCOA, NCSC, and this Court of the WCSC record will indicate the claims against the Appellees include not properly probating the estate 'Will' in the Wake County Superior Court 2017 Caveat1 or 2020 Caveat2 (the Appellant's) or doing so in the WCSC Estates Division estate file among it by N.C.G.S. § 28A/29, which also shows the

probate and the estate file of the 'Will' as 'incomplete'.—thus why the record should be reviewed in the rulings and litigations such as this for such errors.

Subsequently the § 7A-30 and § 7A-31 discretionary review would be required and filed for appeal dismissals. This came for the February 7, 2023 and March 3, 2023 (*Appendix A* pp. 37-38) *En banc* Rehearing (*Appendix A* p. 39) Motion to Stay case for a Mandate, and was prejudicial to the Appellant and to a 'proper day in court' to the evidence and merits of the #16-E-01390 for Caveat2--and the May 9, 2023 Appellant's Motion to Request NCCOA Transmit the Record to NCSC (*Appendix A* pp. 25-27). But when the appellate court does not *sua sponte* by the rules it conflicts with the N.C. Appellate R.13 to R.15. and it for the required R. 9 and R. 11, and for its use in subsequent filings and to this Court—and likely caused the eFiling system to *robo-sign* a NCSC dismissal. Subsequently NCCOA's May 12, 2023 Order without prejudice was sent to the motion for to transmit the record (*Appendix C* p. 1)—. This Court should take the time to review the NCCOA and MCSC procedures for when transmitting the record should or is actually sent and so it does not unknowing to the courts or NCSC affect appeals—causing them to be dismissed by the eFiling system or judge-pnel when it does not see te record.

These Orders were so confusing and non-compliance with the N.C. Appellate rules that Appellant (who was *pro se*) to be timely filed a brief (*Appendix C* p. 2) April 17, 2023 motion requesting extension to file the NCSC brief, and by the (*Appendix C* p. 3) June 7, 2023 2nd motion for a 2nd extension or until NCSC ruled on retaining the #22-276 appeal for the § 7A-30 and § 7A-31, whichever was later and so as to timely file. Without an opinion the Appellant had no analysis to provide the proper arguments for the

appeal or successive filings. Clearly this confused and conflicted with the NCSC rules for the R. 9 and R. 11 deadlines--but instead of following the procedures for these NCSC subsequently 'mooted' it and other valid pending motions—thus the USC 1257 (a) Petition to this Court. Although this case is not for defamation or on receiving damages see a defamation case that discusses deprivation of rights for due process ”.... *Carey v. Piphus*, 435 U.S. 247, 98 S. Ct. 1042 (1978). “....Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property....”

The North Carolina Supreme Court (as highest state court reviewer) further violated the Appellant's constitutional rights after the Appellant filed the § 7A-30 and § 7A-31, who dismissed both the § 7A-30 and § 7A-31 filings on the same day (*Appendix C* pp. 3-5—and seemingly were 'robo-signed' and setting on its court docket (eFiling system) then abruptly denying them on September 5, 2023—dismissing the case--turning the appeal becomes a 'case against the conduct of and questions on the NCCOA's and NCSC's dismissals' as violations of due process and equal protection—contrary to the state court and this Court's appellate rules, violation of the Appellant's civil and at least the 14th Amendment rights. It then 'mooted' the Appellant's Rule 55 default judgment motion (*Appendix C* pp. 8-16) for her now deceased sibling (Respondent 1)—who clearly was unrepresented (by N.C. App. R. 33 or R. 38) in either the NCCOA or NCSC appeals.

The NCCOA Orders (*Appendix A* pp. 33-39) and NCSC Orders (*Appendix C* p. 4 and the Appellees purported to have Rule 3 service to Respondent 1's (by service to his wife but who clearly both were unrepresented and made no appearance in the NCCOA and NCSC appeals), but the NCSC Order (*Appendix C* pp. 3-5). provided no analysis or

opinion for denying the Appellant's Rule 55 default judgment motion (Appendix C pp. 8-16). Such timeline and abruptly dismissing and doing so on the same day (September 5, 2023) for the § 7A-30 appeal notice and § 7A-31 filing clearly was questionable and was NCSC's just to 'clear' the NCSC's (and NCCOA in the February 7, 2023 dismissal) docket, was noncompliance with the N.C. Appellate rules or this Court's rules and decisions, and prejudicial to the Appellant's due process and equal protection rights for either to do so.

STATEMENT OF THE CASE

INTRODUCTION

Appellate courts' disposition of cases is of public interest as several case law avers is to properly resolve the issues in a case. Being so citizens of this N.C. and nationally are affected and when such rights for vague dismissal, and procedural rules are violated in court proceedings—thus it questions the judicial actors and lawyers as officers of the court, and the judicial system. But both might think of the court proceeding as no duty to its often thought-of as being adversarial, but due process and cases as adversarial are two different things and in doing so should correct rulings or judicial errors demands more—thus such rulings are problematic for the litigants (especially those *pro se*—although already in a class considered disadvantaged. Further briefing of this appeal will allow the Appellant to view the statistics and forums that have *pro se* cases and case dispositions that suggest some discriminatory to *pro se* litigants in state and district court and courts of appeal for appellate rule violations e.g. Rule 3 and Rule. 28. But to save time *pro se* status is not the premise of this Petition. Indeed this Court has an opportunity to view that as well). Instead it is premised on the due process, deprivation of it, and

equal protections in the Bill of Rights protections of the N.C. and U.S. Constitutions to at least be provided a ‘fair day in court’ to be heard and the appeal to do so.

See *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662 (1986)....a deprivation may be the consequence of a mistake or a negligent act, and the State may violate the Constitution by failing to provide an appropriate procedural response. In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional; it is the deprivation of property or liberty without due process of law — without adequate procedures....”

WHY THESE DISMISSALS HAVE IMPORTANCE TO PUBLIC INTEREST AND THE PETITION’S REVIEW

This Petition discusses but asks this Court to exclude any purported immunity defense for these Orders (as judicial actors, because the Appellant wishes to reserve those for any U.S.C. 1983 relief filed separately and later) but for it to determine this Petition’s arguments as rulings that were void of an opportunity for a ‘true day-in-court’ for the Appellant’s Caveat2 case #16-E-01390 claims just upto November 2018. It is clear the Appellees have subsequent conduct not addressed in the WCSC case. Both the NCCOA and NCSC erred in their rulings. We know court litigation is difficult enough, but when it requires appeals to the N.C. Court of Appeal and N.C. Supreme Court decisions it becomes clear the judicial actors and attorneys conduct handling the case (who are to be officers of the court) should and must be questioned as improper, as claims of civil rights violations, and as legal malpractice (negligence) against such attorneys (and of Respondent3/AAK—the tribunal lawyer).

Later the Appellees' purported NCCOA/NCSC appellate lawyer (also filed a MTD then abruptly withdrew as Respondent1's lawyer and later also withdrew altogether a few months after and into the case leaving just Respondent3 as the attorney of record for himself and Respondent2 (the Appellant's sibling)—thus the Appellees conduct is contrary to the N.C. Appellate rules, the rules of law, of state courts' and the U.S. Supreme Court decisions for N.C. App. R. 33, R. 38. This Court must correct these rulings and deter these and other attorneys from continuing this and of such conduct when they knowingly (as these did) file replies 'to make themselves look good', 'get court experience' or for some other personal motives or endeavors that benefit themselves and who deny their wrongs and avoid compensating Plaintiffs who have incurred a loss at their hands. Indeed none of these Orders (questionable as *robo-signed*) or the lawyers' filings and non-consents should be considered under any excusable neglect to opinion, R. 33, R. 38, and mediation motions, and later the Rule 55 entry of default motion against Appellee1—and are just rulings contrary to the rules and to due process.

In viewing for this Petition the Appellant sees more writ petitions on timely appeals by FRCP Rule 4(a) or for service e.g. by N.C. App. Rule 3(c) for questions on due process and as jurisdictional or non-jurisdictional. But the questions on the motions in this Petition is determining were they in compliance for other e.g. R. 33, R. 38 and for mediation. But all the appellate rules would be susceptible to deter violation of a deprivation of a constitutional right (whether jurisdictional or non-jurisdictional) and requires appellate courts to comply and determine them by the rules for them—not as these Orders did just ignore and provided no rational for doing so then dismissing the appeals. See *Kinsley v. Ace Speedway Racing, Ltd.*, 284 N.C. App. 665, 877 S.E.2d 54,

2022 NCCOA 524 (N.C. Ct. App. 2022). “....Selective enforcement of the law by the State is barred by an individual's right to equal protection when enforcement is based upon an arbitrary classification....Such arbitrary classifications include prosecution due to a defendant's decision to exercise his statutory or constitutional rights.... citing *United States v. Goodwin*, 457 U.S. 368, 102 S. Ct. 2485 (1982)”—in this case it was the Appellant not the Appellees’ who was deprived among it by non-compliance with the appellate rules. Also cites *id Kinsley* “....Secretary of the North Carolina [DHHS...has since been succeeded..We substitute []...as party to this appeal in accordance with N.C. R. App. P. 38(c)....”—indeed substitutions are required.

LEGAL STANDARD

Judicial proceedings are to follow the local and appellate rules for civil actions and proceedings provided to them by Congress and the legislative bodies for their states, and being so as help maintain the rights of the citizens of the states and U.S.—noncompliance voids them useless and costs everyone including the U.S. as further time, economically, and to the costs to those (as the Appellant) who already have incurred a monetary loss—and why the proceeding was filed in the first place. See <https://dictionary.findlaw.com/definition/due-process.html> “...: a course of formal proceedings (as judicial proceedings) carried out regularly, fairly, and in accordance with established rules and principles called also procedural due process....”. The appellate rules are among the safeguards for doing so, but not complied with in these Orders. Such attorneys and the judge-panel (who ignored and who failed to correct either these attorneys’ conduct as prejudicial or as depriving civil rights) or who did not determine the Plaintiffs valid claims must be corrected by this Court to rescind, reverse and remand the Orders that dismissed case #22-276 and #84P23. Without doing so citizens of North

Carolina. (*pro se* or represented parties) and other court jurisdictions will suffer and so will their belief that courts are or will be fair in litigating their disputes.

Reviewing and correcting this deprivation of due process and equal protection will serve justice in the N.C. courts not attorneys' and Defendant-parties' ill-will conduct to not correct or 'right their wrong' or court filings or the judge-panel (who we hope mistakenly allowed these appeals to 'fall-through-the-cracks'), and do so the Petitioner is allowed a fair day-in-court and to determine the WCSC Caveat's merits and by the N.C.G.S. § 7A-30 and § 7A-31 filed. See *Deminski v. State Bd. of Educ.*, 858 S.E.2d 788, 2021 NCSC 58 (N.C. 2021)....This Court reviews de novo a trial court's order on a motion to dismiss....When reviewing a motion to dismiss, an appellate court considers "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." That alone questions these NCCOA and NCSC's Orders' as contrary to NCSC's own and this Court's decisions—and must be reversed. See *Corum v. University of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (N.C. 1992) “....in determining the rights of citizens under the Declaration of Rights of our Constitution, it is the judiciary's responsibility to guard and protect those rights....”

STATEMENT OF THE QUESTIONS PRESENTED

We know without a proper NCCOA and NCSC opinion (or one with a similar FRCP Rule 52 findings of fact filed or such analysis) the Petition becomes a case questioning the NCCOA and NCSC's conduct instead of to the merits and material facts of the WCSC case #16-E-01390 for the Appellant's mother's N.C. estate. The NCCOA Orders fail and improperly denied the Appellant's motions for or to *sua sponte* Order (1) a N.C.

App. R. 33 notice of appearance for Appellee1—who was deceased, (2) a R. 38 for Appellee1, (3) the motion for court-appointed or paid mediation (NCCOA-R. pp. 31-39), and (4) failed to provide the N.C. Appellate Rules R. 32 mandate, opinion or similar analysis for the February 7, 2023 Order’s dismissal—thus this questions it as a constitutional right and violation and noncompliance with the appellate rules or do so by N.C. App. R. 32 within 20 days of the ruling—which without an opinion would be void.

This questions the dismissal as improper and as NCCOA’s non-compliance and clearly is of national importance to state court and this Court’s litigations and rulings for appeals. See *In re Estate of Skinner*, 248 N.C. App. 29, 787 S.E.2d 440 (N.C. Ct. App. 2016) “....[on] appeal from the trial court's order...this Court is called upon to review a non-jury proceeding. As a general rule: The standard of review of a judgment rendered following a bench trial is "whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." "Findings of fact by the trial court in a non-jury trial are conclusive on appeal if there is evidence to support those findings. A trial court's conclusions of law, however, are reviewable *de novo*....” See the Appellant’s Motion for *En Banc Rehearing Doc. #39* (Appendix A p. 37) , Amended Motion for *En Banc Rehearing (Appendix A p. 38* and Moton to Stay For Mandate (Appendix p. 39) are on the #84-P23 appeal filed March 17, 2023 for the NCCOA #22-276 case. But instead of determining the NCCOA’s Orders as prejudicial (or doing so at all) the NCSC Orders continued these constitutional rights and violations in its September 5, 2023 Order (Appendix C pp. 3-5) and in denying the Appellant’s § 7A-30 and § 7A-31 without review of NCCOA’s ruling for the appeal or WCSC cases’ merits, evidence, proper opinion, or it for use in the U.S.C. 1257(a) to this

Court—thus refusing to do so—and ‘mooting’ all pending filings on the case’s docket. See *id Deminski* “....Constitution...was to provide citizens with protection from the State's encroachment upon these rights. Encroachment by the State is, of course, accomplished by the acts of individuals who are clothed with the authority of the State...whether an adequate state remedy exists....”

REASONS FOR GRANTING THE PETITION

Although the Appellant is *pro se* that class of litigants should not be the basis for an appeal dismissal (be it knowingly, intentional or careless error). Indeed by see an employer case *Tully v. City of Wilmington*, 370 N.C. 527, 810 S.E.2d 208 (N.C. 2018) “....The law of the land clause of that provision states that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land..... N.C. Const. art. I, § 19.... we held that a statute regulating photographers violated Sections 1 and 19 of Article I, we explained that the "fundamental guaranties" set forth in Sections 1 and 19 "are very broad in scope, and are intended to secure to each person subject to the jurisdiction of the State extensive individual rights....”—all of which must be corrected by this Court (and the lower court on remand), but any of these deprive the Appellant of due process and demands more of the judicial officers of the courts.

NCCOA Except For Motions For Extensions The Orders Seem To Be Robo-Signed As

An eFiling System Or Other Software Used To Render The Decisions Or An

Unknown Or Sabotage Intruder To The NCCOA/NCSC’s e-Filing System and of

National Importance If Used in Sending Court Or Bogus Court Orders

An individual's due process rights is integral to the proper and fair functioning of the United States judicial system. The Appellant asks this Court to remand and have all of the NCCOA's and NCSC's non-extension Orders reviewed by the three-judge panel of by the NCCOA judge-panel (which later was reassigned to Judge Chris Dillon, Judge Tobias Hampson, and Judge Jefferson Griffin) provide an analysis that it (the judge-panel received them, had them, viewed these themselves), and ruled on them i.e., and that whether these were not *robo-signed* improperly or unknowingly by the eFiling system ~~(which they seem to be) and did not include the proper judge-panel's signature(s) or~~ include why these valid motions were denied. Although this is not yet Petition or a claim for judicial conduct as absolute or sovereign immunity by U.S.C. 1983 for the deprivation of rights it would still be questionable conduct by *Deminski v. State Bd. of Educ.*, 858 S.E.2d 788, 2021 NCSC 58 (N.C. 2021) "....[S]overeign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights."...."

Motions should not be ruled without a supporting analysis or continue a case without allowing paid or court-appointed arbitration and mediation (Appendix A pp. 2-3) (or as paid mediation) or denying the R. 33 and R. 38 (Appendix A pp. 4-9) motions (that were proper relief and properly filed) by the judge-panel or someone in the NCCOA—and questions the authority of who did so (i.e., who decided these R. 33 and R. 38 motions. Such decisions are of national importance for litigations to ensure valid motions to and ruled by the judge-panel (or by its intervention when the Appellant requested it (Appendix A pp. 28-32)--clearly is of national importance to state court's and this Court's litigations and rulings for appeals to whether court filings actually reach the judge-panel

or if decided by some unauthorized staff at NCCOA or ‘kicked out’ of the eFiling system by some new software being used or similar software (to write and decide cases) instead of the human judge-panel. See a trust accounting case, but is no different than estate administration and includes various states statutes for it by *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950) “....The New York Court of Appeals considered and overruled objections that the statutory notice contravenes requirements of the Fourteenth Amendment and that by allowance of the account beneficiaries were deprived of property without due process of law....”—indeed service by the appellate rules would be required and in Rule 55 default if the parties did make an appearance—and NCCOA and NCSC’s violations to have not *sua sponte* or by the eFiled motions ordered them.

Mediation was Denied

Mediation is allowed and Congress provides the states the authority to provide for it in its and N.C. courts. See by <https://appellate.nccourts.org/Mediation/Consent.pdf> “....it was allowed and should have been provided as an option....” These are questions of compliance with the N.C. Appellate Rules, a question of the Appellees’ lack of good-faith (bad-faith) to have not consented, and was the NCCOA’s judge and judge-panel’s abuse of discretion and abuse of power to have denied the R. 33 and R. 38, motions or to have not *sua sponte* provided them or mediation—thus NCSC’s September 5, 2023 Order (Appendix C pp. 3-5) failed to determine these violations and they are contrary to this Court and state court’s rulings for R. 33 and R. 38. See *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 211 L. Ed. 2d 316 (2021 [judges should process] the case consistent with state statutory law....”—the NCCOA’s judge-panel and NCSC (for the §

7-31/§ 7-31) not doing so clearly deprived the Appellant of the N.C. Appellate rules' compliance—and contrary to decisions of this Court and Congress's intent for mediation.

More than that a review of the WCSC #16-E-01390 record indicates the none of the WCSC judges presiding at the case at any time provided for or Ordered a see WCSC N.C.G.S. § 7A-38.1. Mediated settlement conferences in superior court civil actions (a) Purpose. - The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigant [was] to implement....Promotion of other settlement procedures....Parties to a superior court civil action are encouraged to select other available dispute resolution methods.”--or to do so as mediation (paid or court-appointed). See *Malecek v. Williams* (2017) “.... Under that standard, instead of merely asking if a law is rationally related to some legitimate governmental interest, courts weigh the government's asserted interest against the right to individual liberty or equal treatment that the challengers contend is violated.” --this alone is important and questions the NCCOA's Order (Appendix A p. 36) to a 'proper day in court'.

NCCOA Orders Violated U.S. Constitutional Rights, Due Process, and N.C. Constitutional Rights and N.C. Appellate Rules for Case Dismissals and is of National Interests to Litigation

The public has an interest in the procedural rules as well as any other and as rules are in place to ensure justice and orderly court proceeding. Clearly these NCCOA Orders violated those procedures and the Appellant's constitutional rights by at least the N.C.G.S. § 7A-30 filed and directly involves a substantial question arising under the Constitution(s) of the United States and of the State of North Carolina and as at least 14th Amendment violations and the N.C. Article IV for judicial Court of Appeals, Appellate

Courts, Superior Court members and ‘state actors’—among it Sections 1, 17, 19, and 25, and without more this Court must review it as a violation of the U.S. Constitution and the N.C. State Constitution by Article I, and contrary to state court and this Court’s rulings for appellate decisions.

The Appellant is entitled to relief for the NCCOA and NCSC’s rulings—who turned the Rule 3 appeal into a case against themselves instead of determining the Appellees’ WCSC and NCCOA conduct. See *id Whole Woman's Health v. Jackson* (2021) “....because the principal opinion's errors rest on misinterpretations of Texas law, the Texas courts of course remain free to correct its mistake....” Also see a case on education (but is no different) than in appellate court proceedings and judge-panel rulings such as this judge-panel’s among them as Section § 1983 conduct. Also contrary to *id Deminski* (2021) “....The authorities in North Carolina are consistent with the decisions of the United States Supreme Court ... to the effect that officials and employees of the State acting in their official capacity are subject to direct causes of action by plaintiffs whose constitutional rights have been violated....” *Id Skinner* “...."an abuse-of-discretion standard does not mean a mistake of law is beyond appellate correction."...[F]indings made under a misapprehension of law are not binding," and "[w]hen faced with such findings, the appellate court should remand the action for consideration of the evidence in its true legal light."....”

QUESTIONS TO BE REVIEWED BY THIS COURT

QUESTION 1: DID NCCOA AND NCSC – IMPROPERLY DENIED APPELLANT’S MOTIONS FOR R. 33 NOTICE OF REPRESENTATION AND ORDERS VIOLATED APPELLANTS’ RIGHTS AND BEING SO IS OF NATIONAL INTERESTS TO LITIGATION

The Appellant filed NCCOA non-extension motions and in them requesting the N.C. App. R. 33 substitution for Respondent1 (and as a R. 10 objection) including

requesting it for Appellant1 (her sibling who had passed in late 2020 before the appeal was filed)—but NCCOA denied it. These Orders all seemingly after a few days seemingly were just robo-signed Orders denying the motion with no analysis, reason, FRCP 52 findings of fact or similar included—but not just ignore the R.33 as required throughout the case (Appendix A) and deny it—and did so knowingly, willfully, and misrepresenting who their attorney was, and Appellee3 who is a N.C. lawyer seemingly and are not admitted to practice before the NCCOA just ignored filing anything for R. 33 and purporting instead to have their lawyer file a joint motion to dismiss the appeal. Then these Appellees’ allowed the appeal to be dismissed—‘all without word to correct it’ in the appeal record for R. 33.

Id Carey (1978) “....Thus, in deciding what process constitutionally is due in various contexts, the Court repeatedly has emphasized that "procedural due process rules are shaped by the risk of error inherent in the truth-finding process.... Such rules "minimize substantively unfair or mistaken deprivations of" life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests.....”See *Tully v. City of Wilmington*, 249 N.C. App. 204, 790 S.E.2d 854 (N.C. Ct. App. 2016) “....An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.....”—thus NCCOA and NCSC are no different judges than an agency or administrative judge who is to rule by the rules and contrary to decisions of this Court for R. 33 and the WSCS Order with no Rule 52 findings of fact.

QUESTION 2 - DID NCCOA AND NCSC – IMPROPERLY DENY
APPELLANT’S R. 38 MOTION FOR PARTY SUBSTITUTION AND ORDERS
VIOLATED APPELLANTS’ RIGHTS AND IS OF NATIONAL INTERESTS TO
LITIGATION

The Appellant filed another non-extension motion for the N.C. App. R. 38 substitution for Appellant1 (and as a N.C. App. R. 10 objection). It also seemingly after a few days was sent with an Order denying it and were seemingly just robo-signed of the Orders with no analysis or a Federal Civil Rules of Procedure (FCRP) Rule 52 findings of fact or similar included or any signatures of the three-judge panel (Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin) assigned to the appeal or a judge’s signature indicating it had been reviewed properly—was requested by NCCOA *Doc.#16* on July 1, 2022 the N.C. App. R. 38 substitution for Appellant1 (see Appendix A p. 4-13).

By the N.C. App. Rules at least the R, 38 motion should have been granted or *sua sponte*.. *Id Carey* (1978) “....Where the deprivation of a protected interest is substantively justified but procedures are deficient in some respect, there may well be those who suffer no distress over the procedural irregularities. Indeed, in contrast to the immediately distressing effect of defamation *per se*, a person may not even know that procedures *were* deficient until he enlists the aid of counsel to challenge a perceived substantive deprivation. See *id Tully* N.C. Ct. App. 2016 “....The failure of the Board and of the Department of Justice to follow their own established procedures was held a violation of due process.....”—violates the Appellant’s due process and contrary to decisions of state courts and this Court for R. 38 parties and of national importance to state litigations. See *Pullman-Standard v. Swint*, 456 U.S. 273, 102 S. Ct. 1781 (1982)... “....If the Court of Appeals had really been applying the clearly-erroneous rule, it should have abided by the “usual requirement of remanding for further proceedings to the

tribunal charged with the task of factfinding in the first instance....”—contrary to the appellate rules and important to citizens of N.C. and nationally that litigants (*pro se* and others) be provided an impartial rulings.

QUESTION 3 - DID NCCOA AND NCSC – IMPROPERLY DENY
APPELLANT’S MOTION FOR MEDIATION/ARBITRATION AND ORDERS
VIOLATED APPELLANT’S RIGHTS AND IS OF NATIONAL INTERESTS TO
LITIGATION

The Appellant filed at least two motions for court-appointed, arbitration, mediation or paid mediation and opposition when they were denied (and as a R. 10 objection to it not being granted or doing so *sua sponte*). See May 17, 2022 NCCOA R. Doc.#6 for mediation and June 7, 2022 NCCOA R. Doc. #8 [sic and Doc. #11 June 7, 2022] for Opposition to Attorney Withdrawal for Appellee1 and Rule 38 substitute—but the NCCOA denied all of them. See also <https://appellate.nccourts.org/Mediation/Consent.pdf>]. “....Since 2002, the Court of Appeals has provided represented parties the opportunity to mediate some cases pending on appeal...but you can participate only if you return the attached form and if all parties agree on the type of mediator you desire...All counsel of record must return the Consent to Mediation form to the Court of Appeals within 15 days after docketing of the appeal before you will be assigned to the program.....“.

These motions also were sent with Orders denying them and were seemingly just a robo-signed Order with no analysis and or a Federal Civil Rules of Procedures (FCRP) **Rule 52 findings of fact** or similar included or any signatures of the three-judge panel--not complying with state or its own N.C. Appellate Rules. *Id Tully* (2016) “....the arbitrariness which is inherently characteristic of an agency's violation of its own procedures...Additionally, "[t]he Accardi doctrine ... requires reversal irrespective of

whether a new trial will produce the same verdict....” See *Toomer v. Garrett*, 155 N.C. App. 462, 574 S.E.2d 76 (N.C. Ct. App. 2002) “....In general, substantive due process protects the public from government action that unreasonably deprives them of a liberty or property interest...If that liberty or property interest is a fundamental right under the Constitution, the government action may be subjected to strict scrutiny.....” On that alone a due process violation and should be remanded to the three-judge panel (Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin) assigned to the appeal to provide a proper opinion and mediation (contrary to the local and appellate rules for docketing the case. See (Appendix A pp. 2-4) motion for arbitration/mediation.

WCSC Case #16-E-01390 And Orders Violated Appellants’ Rights and is of National Interests to Litigation and Was Objected to in the WCSC Hearing Transcript The appellate rules required and the Appellant properly filed the NCCOA R. 9

and R. 11 printed record for the #22-276 appeal of the WCSC #16-E-01390 case and ultimately this Court would request for this Petition and contained:

- (1) the Appellant’s February 13, 2020 Caveat,
- (2) the questions on appeal about the Appellees’ purporting a SOL defense as also reversible and to the N.C.G.S. § 1-52 and § 1-15 as available statutes of limitation to the material facts,
- (3) Plaintiff’s WCSC motions including requesting o/a December 14, 2021 to the WCSC trial court administrator (TCA) asking for Judge Rozier to provide the Rule 52 for findings of facts and a ruling on the Rule 59 (motion for reconsideration (MFR))for the November 18, 2021 Order (Appendix B pp. 2-3) but was and has not been provided to the Appellant,
- (4) includes the N.C. App.. R. 7 transcript (R. pp. 174-213) of and contract for the hearing for the case #16-E-01390 Order, and (Appendix B pp. 6-17)
- (5) included that no supplemental record was to be filed, and included the R. 9(a)-(m) issues and R. 11 for the NCCOA #22-276 appeal for it—and validly documenting the appeal.

If we are to look for compliance in doing a review the WCSC #16-E-01390 transcript (NCCOA-R p. 200 lines 9-18)—among it shows the Appellant timely raised the question of the SOL (and as objection to have it determined), but WCSC Judge Rozier’s November 18, 2021 Order (Appendix B pp. 2-3) did not do so or provide the Rule 52 findings of fact and the NCCOA and NCSC appeals did not determine it. All questions of importance to litigation, to the record and for Rule 12(b)(6) dismissals required for a proper review of the Caveat record. WCSC, NCCOA, and NCSC violated at least the *N.C. Constitution Article I Sections 1, 18, 19 and 25* rights among it to *id* “...(1) life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness ...” See transcript (Appendix B p. 8) extracted pages of WCSC T. p 179 lines 22-25) “....Before we do that, I would argue that these documents were supposed to go to [the WCSC TCA] for the Senior Resident Judge ...”—thus questions for this Court to it and NCCOA’s dismissal for the merits including its discrepancies and prejudice to the Appellant’s Caveat2 (and was a R. 10 objection). See *Howell v. Cooper*, No. COA22-571 (N.C. Ct. App. Sep. 5, 2023) “...Our Supreme Court has held that the "law of the land" clause is North Carolina's...that clause protects those "fundamental rights and liberties which are, objectively, deeply rooted in [this State's] history and tradition and implicit in the concept of ordered liberty....”

Litigants are to have rights protected by the State (and U.S.) Constitution.as in *Howell* citing *id Deminski* (2021) also is to due process for the courts to comply with the appellate rules. It also cites *id Tully* (2016) protecting the public interest and to it as the Appellant’s mother’s estate and to deprive her of her interest in it and as an heir and any loss for the estate . The Orders are contrary to Rule 12(b)(6) dismissals, N.C.G.S 1-1

Rule 52, state courts and this Court's rulings for them requiring Rule 52 findings of fact and similarly to *id Pulliam* "....While the Court of Appeals correctly stated the controlling clearly-erroneous standard of Rule 52(a), its conclusion ...was the...the court's improper independent consideration of the totality of the circumstances it found in the record. When the Court of Appeals concluded that the District Court had erred in failing to consider certain relevant evidence, it improperly made its own determination based on such evidence...." *Id Owensby v. the Estate of Phillips* (2010) "....our review of the trial court's order is limited to...whether the trial court's findings of fact support its conclusions of law and whether its conclusions of law rest on a correct understanding of the applicable statutory provisions.[citing]...[citing] *In re Will of Durham*...."

Necessary parties were to be substituted for cases as required. and prejudicial to the Appellant's relief for her mother's estate (as an heir, in intervening, to her rights by the 'Will' and by N.C.G.S. 28A/29 for estate administration. The transcript has a discussion about Respondent1 as being deceased (Appendix B pp. 3-4) and is questionable due process (for the R. 38). Although a child custody case but this is no different on whether the same judge should hear the motion (and/or rule on the Rule 59 motions) by see *Quevedo-Woolf v. Overholser*, 261 N.C. App. 387, 820 S.E.2d 817 (N.C. Ct. App. 2018) "....upon *de novo* review [whether the case deprived a] constitutionally protected status as a parent was supported by clear and convincing evidence...."—thus no different than 14th amendment violation. Any misrepresentations about Appellee1 and where Appellee3 (clearly neither represents him any longer) was his tribunal attorney says (Appendix B pp. T. p. 191 lines 9-10) "...[Appellee1] is deceased, so he can't be present, right...."—clearly Appellee3 acknowledge Appellee1 as being deceased—but Appellee3

ignored it as needing a local WCSC Rule 19 or Rule 25 substitute, and for the N.C. App. R. 33 and R. 38 motions for it. *Id* (T. p. 191 lines 19-23) and Appendix B p. 6 lines 19-23)—all questionable to NCCOA's review for a Rule 12(b)(6) dismissal and objections on these misrepresentations during the hearing.

See the WCSC Orders (Appendix B pp. 1-2 Judge Rozier's and Judge Tally's pp. 3-4) and the appeal Order—thus were non-compliant with its own state N.C. procedures and N.C. Appellate Rules. It clearly did not review the material facts or objections the Appellant asked of him.--just granted the Defendants/Respondents' MTD (for WCSC #16-E-01390) without doing so was prejudicial to the Appellant's interest in her mother's estate (as an heir and in intervening and to her rights in the 'Will' and by N.C.G.S. 28A/29 for estate administration. *Id Tully* (2018) "...We note that other courts have recognized the impropriety of government agencies ignoring their own regulations, albeit in other contexts...."

The appellate courts have jurisdiction to hear and correct any deficiencies in the appeal and motions, WCSC Order (and it for Rule 52)—whether jurisdictional or non-jurisdictional. A useful case discussing this is by see *In re Custodial Law Enft Agency Recording Sought by Capitol Broad. Co.*, 886 S.E.2d 866 (N.C. Ct. App. 2023) "...because we conclude the trial court did not have subject matter jurisdiction in this case. Although no party argues the trial court lacked subject matter jurisdiction, "[i]t is the continuing duty of this Court to [e]nsure, even *sua sponte*, that the trial court had subject matter jurisdiction in every action it took." *Quevedo-Woolf v. Overholser*, 261 N.C. App. 387, 409, 820 S.E.2d 817, 832 (2018) ...(explaining "it becomes our duty *ex mero motu* to take notice of" a jurisdictional defect even when it was "not discussed or

alluded to by either party")...the proceedings of a court without jurisdiction of the subject matter are a nullity." The NCCOA should have reviewed the Order (Judge Rozier's including Judge Tally's, and Judge Collins') Orders and their role for Rule 12(b)(6) dismissals where no N.C.G.S 1-1 Rule 52 had been filed.

QUESTION 4 - DID NCCOA AND NCSC – IMPROPERLY GRANT APPELLEES' MOTION TO DISMISS WITHOUT PROVIDING AN ANALYSIS OR OPINION OR DETERMINE THE MERITS OR MATERIAL FACTS AND VIOLATED AT LEAST THE 14TH AMENDMENT DUE PROCESS, AND IS OF NATIONAL INTERESTS TO LITIGATION TO THE CITIZENS OF NORTH CAROLINA

En banc and rehearing and motions for them are allowed by the Rules for them, but NCCOA denied those (*Appendix A pp. 35-39*) Orders and later deprived the Appellant of further review by the highest state court's (NCSC) dismissal (*Appendix C pp. 3-5*) for the § 7A-30 and § 7A-31 without any opinion or analysis and directly involves a substantial question arising under at least the 14th (Fourteenth) Amendment to the Constitution of the United States and under Article IV of the Constitution of the State of North Carolina for judicial members, in that it deprives rights secured thereunder who should have *sua sponte* determined the dismissal, contrary to the appellate rules, and provided Rule 11 sanctions against the Appellees for their conduct in the NCCOA case. See *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662 (1986). "....The constitutional duty to provide fair procedures gives the citizen the opportunity to try to prevent the deprivation from happening, but the deprivation itself does not necessarily reflect any "abuse" of state power...." *Id Daniels* is a revocation case and contrary to the Appellant's case but discusses it as an estate matter as is the WCSC Order. See *In Matter of the Will of Durham*, 697 S.E.2d 112, 698 S.E.2d 112 (N.C. Ct. App. 2010) "....The signature of an

attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper...”

Indeed motions and oppositions require R. 10 or similar objections in the lower court. When a party knows both the R. 33 and R. 38 were deficient this further compounded the judicial procedures for the appeal when they do not consent to have these or to have mediation—and so was the judge-panel to provide *sua sponte*. and is of national interests and the public and to the citizens of North Carolina to litigation. But by *Lannan v. Bd. of Governors of the Univ. of N.C.*, 879 S.E.2d 290, 2022 NCCOA 653 (N.C. Ct. App. 2022) “....In conducting such a review of the complaint, appellate courts treat as true the complaint's allegations.[citing *id Deminski* [2021]]....see N.C. R. App. P. 28(a) (“The scope of review on appeal is limited to issues so presented in the several briefs...” NCCOA not doing so violated these appellate rules. This USC 1257 writ must question whether and why NCCOA and NCSC did not comply with the N.C. Appellate Rules for the motions—and that no opinion would be filed (*Appendix A* p. 36).

NCSC (and NCCOA) deprived the Appellant of relief and instead was NCCOA and NCSC’s further ‘taking of rights’ and to the Appellant as an heir in her mother’s estate—as conduct by *id In Matter of the Will of Durham* (2010) “...."In analyzing whether the [filing] meets the factual certification requirement, the court must make the following determinations: (1) whether the [party] undertook a reasonable inquiry into the facts and (2) whether the [party], after reviewing the results of his inquiry, reasonably believed that his position was well-grounded in fact....” See *Lannan v. Bd. of Governors of the Univ. of N.C* (2022) NCCOA 653 (N.C. Ct. App. 2022) “....Our Supreme Court has explained "to be considered adequate in redressing a constitutional wrong, a plaintiff must have at

least the opportunity to enter the courthouse doors and present his claim." See *id* *Quevedo-Woolf v. Overholser* (2018) citing "...*Sisk v. Sisk* , 221 N.C. App. 631, 636, 729 S.E.2d 68, 72 (2012) (judge who did not preside at trial "was without jurisdiction to enter an order on plaintiff's motion for new trial" pursuant to Rule 59)...."

NCCOA'S Dismissal Was Noncompliant With the N.C. Appellant Rules and
Prejudicial by the Three-Judge Panel Purported Order and Is of National Interests to
Litigation and to the Citizens Of North Carolina

Opinions are to be filed for rulings (whether unpublished or published). The NCCOA and NCSC (as Article III courts) not complying with the rules deprived the Appellant of relief to the WCSC case's Caveat2 and NCSC. If the appellate courts comply with R. 3 (as jurisdictional and mandatory) they should comply or provide some useful ruling that provides that they at least reviewed the court record, filings and comply with the other N.C. App. Rule, and so should the state courts nationally. The Appellant timely raised the motion and question as non-compliance for the opinion (Appendix A) but was denied and was err for the NCCOA to do so. See *id* *In Matter of the Will of Durham* (2010) "...According to N.C.R. App. P. 3(c), notice of appeal in a civil action or special proceeding must be filed "within thirty day...by Rule 58 of the Rules of Civil Procedure...."—instead the NCCOA denied the Appellant's motion to 'stay the case and mandate (Appendix A pp. 14-16) until for the judge-panel provided the opinion' or R. 52 findings of facts, and to use in the 1257(a) Petition—instead was just an Order with couple of sentences saying: (1) denying and 'not providing the requested opinion' and saying it would not be filed (Appendix A p. 36) and (2) at (Appendix A pp. 36-39) denying the '*en banc* rehearing motion'. This questions the eFiling system by some new software being used or similar software to decide cases instead of the human judge-panel.

Id Tully (2018) “...[citing] *Corum v. University of North Carolina* ,[t]he civil rights guaranteed by the Declaration of Rights in Article I of our Constitution are individual and personal rights entitled to protection against state action....[we] determine whether a constitutionally protected property interest exists. To demonstrate a property interest under the [Constitution], a party must show...he must have a legitimate...entitlement...”

See the 14th Amendment “....No state shall...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.....” Article 1 Secs #1, 18, 19, and 25 violations. Contrary to the Appellant it is the Appellees who should be held accountable for the conduct of their purported attorney or in their being unrepresented in the appeals. See *id Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993) “.... [who] voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent...each party is deemed bound by the acts of his lawyer-agent and is considered to have ‘notice of all facts, notice of which can be charged upon the attorney....”

Whether doing so as jurisdictional or non-jurisdictional valid motions (the Appellant’s) R. 33, R. 38, mediation and Rule 55 entry default should be properly ruled for the relief requested. Dismissals that are contrary to filing FRCP Rule 52 findings of and to Rule 12(b)(6) dismissals require doing so and are of national importance to litigation. Contrary to the Appellant whose was timely see a U.S. Court of Appeals case *Thompson v. E.I. DuPont de Nemours Co.*, 76 F.3d 530 (4th Cir. 1996) “...[citing *id Pioneer* (1993)]....to allow untimely action by asking whether the failure to meet the

deadline resulted from excusable neglect; if the answer is yes, then the court should consider the equities and decide whether to excuse the error....”—and is no different than the requirement for NCCOA and NCSC’s compliance to determine them.

Not doing so or granting them violated both the N.C. Constitution and U.S. Constitution in protection of such rights (due process and equal protection). See *Owensby v. the Estate of Phillips*, 702 S.E.2d 555 (N.C. Ct. App. 2010). Contrary to the Appellant “...Caveator lacked standing....According to well-established North Carolina law, “[a] court’s failure to enter findings of fact and conclusions of law on [sanctions] issue[s] is error which generally requires remand in order for the trial court to resolve any disputed factual issues....the Supreme Court has stated “that reference should be made to the document itself... should be judged as of the time the document was signed.....[if decision] rested to a significant extent upon the information set out in Defendants’ filings, does not make it “evident” that Plaintiff’s complaint was not warranted by existing law at the time of filing....The record clearly reflects that no decision was ever made in the court...on the merits of [the] Plaintiffs’....motion”.

When an Appellant is deprived it is a U.S. Constitution violation the rulings fail by *id Tully* (2018) “....[N.C. Article I Section 1 violation] it is inherently arbitrary for a government entity to establish and promulgate policies and procedures and then not only utterly fail to follow them....The majority also stated that “ ‘irrational and arbitrary’ government actions violate the ‘fruits of their own labor’ clause....”.

QUESTION 4A - THE NCCOA AND NCSC COMMITTED REVERSIBLE ERROR IN THE DISMISSAL AS A U.S. CODE. 1983 VIOLATION (BUT APPELLANT RESERVES THIS VIOLATION AS SEPARATE CLAIM) AND TO NCCOA’S CONDUCT AS A STATE-ACTOR BY THE N.C. CONSTITUTION ARTICLE 1 SEC. #1, 18, 19, AND 25 AND IS OF NATIONAL INTERESTS TO LITIGATION

An Order violates N.C. Article 1 Secs #1, 18, 19, and 25 when it does not provide opinion, mandate (timely), similar or any analysis for its dismissal for the Orders (Appendix A p. 39) denying the Appellant's *en banc* rehearing motions (Appendix A p. 37-38). See *id Carey* (1978)“....In other cases, the interests protected by a particular constitutional right may not also be protected by an analogous branch of the common law of torts....”See [*Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473 (1961)]” The NCCOA's dismissal was non-compliance with its own appellate rules. See a NCCOA marriage case on whether the conduct violates a constitutional right and of its importance for North Carolina and national importance in litigating cases and dismissals of them. It is of importance to the citizens of North Carolina when constitutional rights are violated. See *id Malecek v. Williams*, 255 N.C. App. 300, 804 S.E.2d 592 (N.C. Ct. App. 2017) “....Under that standard, instead of merely asking if a law is rationally related to some legitimate governmental interest, courts weigh the government's asserted interest against the right to individual liberty or equal treatment that the challengers contend is violated.”

Determining material facts are why review is provided in court proceedings. Their being resolved by the state courts and U.S. Supreme Court come in the form of opinions—and are of interest to N.C. citizens and nationally. But those that violate N.C.G.S. § 28A/29 for estate administration and estate proceedings are more so and in their providing proper transfer of such estate properties, for and to beneficiaries by the estate statutes as in the motion for the opinion (*Appendix A pp. 14-16*) asking when the NCCOA would file it—but was denied (Appendix A p. 39) and fails by *id Quevedo-Woolf v. Overholser* (2018)“....the court below [lower] may proceed upon any other matter included in the action and not affected by the judgment appealed from.....”—so a late ruling for the Rule

59 and providing the Rule 52 findings of fact was available—but did not do so and is non-compliance. See *id Owensby* (2010) “..... According to well-established North Carolina law, “[a] court's failure to enter findings of fact and conclusions of law....generally requires remand in order for the trial court to resolve any disputed factual issues....” Deprivation of findings violates as in *id Tully* (2018) “....The law of the land clause of that provision states that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.” N.C. Const. art. I, § 19...‘law of the land’ is synonymous with ‘due process of law [N.C.] Article I, Section 19....” See *Id Tully* (2016) and failing to comply with its own promotional policies and procedures.” But also *id In Matter of the Will of Durham* (2010) as in “....Although “good faith reliance on an attorney's advice preclude[s] sanctions against the party under the legal sufficiency prong””

Litigants must have standing and an interest in the case. Unlike the Caveator in *id Durham* (2010) the Appellant has “....establish[ed] the necessary “private interest...” as an heir in the ‘Will—all undetermined the WSCS, NCCOA, and NCSC Orders or for the Appellant’s equitable relief for the estate property, mortgage payments paid to the lender (a separate civil case) in 2018, and is deprivation when not complied with. See the North Carolina Rules of Appellate Procedure Article I....Rule 1 ”.... (b) Scope of Rules. These rules govern procedure in all appeals from the courts of the trial division to...Court of Appeals to the Supreme Court; in direct appeal...which the courts or judges thereof are empowered to give.....”

But Orders as these (Appendix A p. 37-39) and later NCSC (Appendix C pp. 3-5) Orders) violate N.C. Article 1 Sec. #1, 18, 19, and 25 by *id Quevedo-Woolf v. Overholser* “....[U.S. Supreme Court]...an interest in liberty entitled to constitutional protection.... familial relationship, to the individuals involved and to the society.... interest in personal contact with his child acquires substantial protection under the Due Process Clause. At that point it may be said that he "act[s] as a father toward his children....”. None of that is any different than the Appellant who had right to the proceedings, intentions of her mother’s ‘Will’, estate administration, and the Appellees’ handling of it. See *id Quevedo-Woolf* (2018) “....Furthermore, when the pleadings "raised an issue of *devisavit vel non* and necessitated transfer of the cause to the civil issue docket for trial by jury," "jurisdiction to determine the whole matter in controversy, as well as the issue of *devisavit vel non*, passed to the Superior Court in term....”

The sections of the N.C. and U.S. Constitutions as violations in this Petition protect against deprivation of the Appellant’s rights. *Id In re S.D.W.*(2013) citing “....Toomer (2002) In general, substantive due process protects the public from government action that unreasonably deprives them of a liberty or property interest. If that liberty or property interest is a fundamental right under the Constitution, the government action may be subjected to strict scrutiny.”,,,“Applying the Due Process Clause is ... an uncertain enterprise which must discover what ‘fundamental fairness’ consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake....” Unlike see *id In re Custodial Law Enf’t Agency*(N.C. Ct. App. 2023)”.... [i]t is the continuing duty of this Court to [e]nsure, even *sua sponte* , that the trial court had subject matter jurisdiction in every action it took...."it becomes our

duty *ex mero motu* to take notice of" a jurisdictional defect even when it was "not discussed or alluded to by either party")...."--requests for disclosures and releases of the court record and its transcripts but is no different than for the appellate courts to determine the material facts.

QUESTION 5 - DID NCCOA AND NCSC'S ORDERS VIOLATE
CONSTITUTIONAL RIGHTS AND N.C. APPELLATE RULES BY N.C. G.S. §
7A-30 OR § 7A-31 FOR AFFIRMING OR DISSENTING OPINIONS OR NO
OPINIONS AND IS OF NATIONAL INTERESTS TO LITIGATION

For a § 7A-30 and § 7A-31 there must be some arguments for why the appellate court ruled as it did, and to use for a rebuttal whether it is an affirming or dissenting opinion for *en banc* motion (*Appendix A p. 36*— and for 1257(a) petitions. *Id Tully* (2016) “....[argument] is supported by persuasive federal case law and is in keeping with our State's constitutional jurisprudence....” And this opinion must include the Appellees’ MTD (and any oppositions filed—when it does not do so it clearly violates the rules for providing a ‘trustful’ ruling citizens can use and know that their filings have at least been viewed as they relate to the material facts not doing so is non-compliance with the statutory law and the N.C. Appellate rules. See *id Thompson v. E.I. DuPont de Nemours Co.* (4th Cir. 1996) “....on the Federal Rules of Appellate Procedure, we now join the overwhelming majority of our...circuits in holding that the "good cause" standard is only applicable to motions for enlargement of time filed within thirty days of the entry of judgment.... When they do not these lower court and these appellate dismissals also fail as a standard for review by see *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)....on a motion to dismiss....Factual allegations must be enough to raise a right to relief above the speculative level....we do not require heightened fact

pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face....” —and opinions are required.

The common law and estate administration proceedings’ rights to litigate are no different than any other, and appellate courts should comply with their own rules. See *Malecek* (2017) “....we [NCCOA] review the grant of a Rule 12(b)(6) motion to dismiss *de novo* , we must address all grounds...challenged these two common law claims..”—*Id Bell Atl. Corp* “....a civil lawsuit between private parties constitutes "state action" for purposes of the Fourteenth Amendment when enforcement of that cause of action imposes liability for engaging in a constitutionally protected right....” By *id Kinsley* “....if “provisions of Rule 3 are jurisdictional, and failure to follow the rule's prerequisites mandates dismissal of an appeal....” Rule 33, R. 38 motions (and mediation), Rule 55 default motions and opinions or *sua sponte* should not go unattended. See a U.S. District court case (but no different than the NCCOA or NCSC to the N.C. App. rules and by *United States v. Moradi*, 673 F.2d 725 (4th Cir. 1982) “....justice also demands that a blameless party not be disadvantaged by the errors or neglect of his attorney which cause a final, involuntary termination of proceedings ...”—and violations should not be attributed to excusable neglect—but as procedural rules and as depriving due process.

See *Blue v. Thakurdeo Michael Bhiri, P.A.*, 871 S.E.2d 691, 2022 NCSC 45 (N.C. 2022). “....The Court of Appeals then noted that when a Rule 12(b)(6) motion is converted to a Rule 56 motion, Rule 12(b) provides that "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56The Court of Appeals began its analysis by "determin[ing] whether the trial court reviewed the [c]omplaint under Rule 12(b)(6) ... or the pleadings and facts outside the

pleadings under Rule 56....” Both appellant courts’ dismissals fail, for Rule 12(b)(6). See *In re S.D.W.*, 745 S.E.2d 38, 228 N.C. App. 151 (N.C. Ct. App. 2013). “....“In general, substantive due process protects the public from government action that unreasonably deprives them of a liberty or property interest. If that liberty or property interest is a fundamental right under the Constitution, the government action may be subjected to strict scrutiny.”

CONCLUSION

THE NCCOA’S AND NCSC’S ORDERS ARE CONTRARY TO THE N.C. APPELLATE. RULES FOR DISPOSITION OF APPEALS AND IS OF NATIONAL INTERESTS TO LITIGATION AND FOR *PRO SE* FILERS

This Petition presents several important issues concerning the Petitioner’s fundamental due process rights under the United States Constitution, as made applicable to the States by the Fourteenth Amendment, By *id Tully* (N.C. Ct. App. 2016) “....Arbitrary and capricious acts by government [sic actors] are ... prohibited under the Equal Protection Clause[] of ... the North Carolina Constitution...” The NCCOA three-judge panel was required to (and so do the appellate rules) provide the required opinion, for the *en banc* rehearing motion (Appendix A pp. 37-38) and its other Orders in (Appendix A). Appeals allow and ultimately this appeal required (as do all) necessary parties (including the Rule 55 entry of default (Appendix A pp. 3-5) was the proper relief for Appellee1’s non-appearance),

But more than that these rulings, questions on them and the motions filed provides for this Court opportunity to review them so it ensures, provides, and resolves the proper standard for review among it *pro se* litigants (who although courts suggest they will be somewhat lenient) continue to be disadvantaged. This Court doing so will help to ensure appeal cases’ rulings are void of arbitrary and procedurally due process deprivations), for

eFilings and requests and for the N.C. Court of Appeals and N.C. Supreme Court to adhere to the proper procedures for motions, opinions and estate administration (for its deceased citizens) and for determining compliance with the states' appellate rules and nationally, and so R. 33, and R. 38, N.C.G.S. 7A-38 mediation, and *en banc and* re-hearings, and for N.C. Constitution Article 1 constitution rights and the U.S. Constitution for at least 14th Amendment rights for the due process and equal protection clauses and for requested jury trials, Rule 55 motions—but not denied and dismissed and in compliance for Rule 12(b)(6) dismissals. Appellate courts (and lower courts) dismissals without determining the merits of 'Wills' and estate administration is improper and is for a judge-panel to purport having rendered a ruling with no opinion is excessively contrary to the procedural due process.

This is why this Court must also grant this 1257(a) Petition—and review these Orders, so the citizens of N.C., nationally and this Court can be better assured judicial court proceedings and litigations are following Congress' legislation are following them, not depriving litigants (*pro se* or represented) of their 'day-in-court', and complying with procedural due process--instead of 'bad' Orders those that deprive citizens of the protection against doing so, as in the state and U.S. Constitutions, and the Bill of Rights. This court must grant this Petition to resolve discrepancies in the appellant rules, ensure Orders are not 'bogus or being *robo-signed*' by eFiling systems,, and so Appellants are compensated for their losses occurring at the hands of Appellees and adversarial parties.

Respectfully submitted this the 24th day of January 2024.

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