

23-6614  
No. TBD

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

**Kathy R. Allen - PETITIONER**  
VS.

**Arthur L. Allen [sic deceased]**  
**Mary Flager Allen (ALA's wife)**  
**Anthony A. Klish**  
**State Employees Credit Union ("SECU")**  
**C/O Cathleen M. Plaut**  
**Wake County Super. Ct. Guardian Ad Litem**  
**C/O William D. Harazin, PLLC - RESPONDENT(S)**

Supreme Court, U.S.

FILED

JAN 26 2024

OFFICE OF THE CLERK

**ON PETITION FOR WRIT OF CERTIORARI**  
**To The Supreme Court Of North Carolina (NCSC) #161P23**

**PETITION FOR WRIT OF CERTIORARI**



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**QUESTIONS PRESENTED**

1. Whether NCCOA and NCSC – Improperly Deny Appellant’s Motions for R. 33 Notice of Representation and is of National Interests to Litigation
2. Whether NCCOA and NCSC – Improperly Deny Appellant’s R. 38 Motion for Party Substitution and is of National Interests to Litigation
3. Whether NCCOA and NCSC – Improperly Deny Appellant’s Motion for Mediation/Arbitration and is of National Interests to Litigation
4. Whether 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 14<sup>th</sup> Amendment Due process, and U.S. Code. 1983 and is of National Interests to Litigation
- 5.. Whether 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

## **PARTIES TO PROCEEDINGS**

*Kathy R. Allen is the Petitioner* and filed the WCSC 2018 lawsuit for her mother's N.C. estate property after the State Employees Credit Union filed a foreclosure action.

*Arthur L. Allen [sic deceased] is Respondent 1* and Petitioner's oldest sibling who was the personal collector for her mother's estate and 'Will' but himself passed in late 2020. His wife Mary Flager Allen is supposedly his estate's personal collector).

*Anthony A. Klish is Respondent 2* and was ALA's (Respondent 1) ' lawyer in the estate and later the WCSC 2018 case.

*State Employees Credit Union/ (SECU) C/O Cathleen M. Plaut* is the mortgage lender for the N.C. estate property who filed a foreclosure action.

*William D. Harazin, PLLC* is the Wake County Super. Ct. Guardian Ad Litem and his law office is who notified the Petitioner (by N.C.G.S. -§ 45.21-16 (as an heir) of the N.C. foreclosure.

## **RELATED CASES AND HEARINGS**

Wake County Superior Court (WCSC), North Carolina Court of Appeals (NCCOA), North Carolina Supreme Court (NCSC))

Wake County Superior Court Raleigh, North Carolina #18-CV-13119. *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem) and four Defendants lawsuit filed October 26, 2018. Judgment entered o/a June 5, 2019.

Wake County Superior Court Raleigh, North Carolina #18-CV-13119 *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem). Motion for reconsideration (MFR) filed o/a June 26, 20219 for the o/a June 5, 2019 Orders. Judgment entered o/a September 27, 2019.

Wake County Superior Court Raleigh, North Carolina #18-CV-13119 *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem) o/a November 2019 filed appeal to WCSC of the September 27, 2019 Order case but not ruled until Coronavirus delays. Judgment case was dismissed on Defendants' suggesting the R. 7 transcription contract, and R.9 and R. 11 proposed and printed record had not been filed and entered February 14, 2020 and Defendants requested a Gatekeeping Order for further filings against them.

Wake County Superior Court Raleigh, North Carolina #18-CV-13119 *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem) also not rule but into Coronavirus delays. Judgment December 13, 2021 denied March 2020 MFR for February 14, 2020 Order prompted R. 3 North Carolina Court of Appeals appeal #22-601 filed.

North Carolina Court of Appeals - #22-601 *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem). Judgment entered May 4, 2023 dismissed appeal granting Appellees' MTD

North Carolina Court of Appeals - #22-601 *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem) June 6, 2023 denied Appellant's *en banc* rehearing motion prompted the North Carolina Supreme Court #161P23 appeal for the May 4, 2023. Judgment entered September 5, 2023.

North Carolina Supreme Court - #161P23 *Kathy R. Allen v. Arthur L. Allen, Anthony A. Klish, State Employees Credit Union (SEC), and William D. Harazin* (Guardian ad litem). Judgment entered August 30, 2023 dismissed the Appellant's § 7A-30 appeal and § 7A-31 discretionary review.

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## **PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully asks this Court for and to grant this writ of certiorari to review the Orders of the #22-601 N.C. Court of Appeals (NCCOA) and #161P23 N.C. Supreme Court (NCSC) in this Petition. 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).. 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 ("WCS")'Caveat for case #18-CV-013119 that ultimately was filed against the Appellees for their handling of the Appellant's mother's mortgage property, 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

[x] 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

[x] 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 May 4, 2023 nor NCSC for its August 30, 2023 and September 5, 2023 Orders filed any opinions and is among the questions the Petitioner finds of not having a proper day-in-court for her 2018 #22-601 lawsuit or these appeals. Based on that alone this Court should and must rescind, reverse, and remand these 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....”

Rulings void of opinions questions the eFiling systems of the court and those nationally and questions it as *robo-signed*. This court has an opportunity to review this as a procedural defect, and do it so state courts' and nationally eFiling systems do not send out bogus Orders. Indeed automation has provided that such could happen and just 'kick' cases and Orders out of the eFiling system as dismissed without the proper review or due process of human intervention (especially where no in-session or virtual attendance is required, e.g. dismissing oral arguments altogether ). Rule 14.(d) section is to be used to cite the cases of opinions or the opinion, but the NCCOA Orders were void of it--thus no opinions are available for this sections of the Petition—and clearly err to not do so, such rulings are of importance to the court proceedings nationally and this Court should remand and reverse the Orders base on non-compliance and among the reasons why this Court should grant the writ to these as violations of the due process and equal protection clauses of the U.S. Constitution.

So do court filings actually reach the judge-panel or are 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 (*infra*) if the parties did make an appearance—and NCCOA and NCSC's violations to have not *sua sponte* or by the eFiled motion granted them.

How can Orders such as the NCSC Orders purported to include service (Rule 4) copies to West Publishing (By Email), Lexis-Nexis-(By Email) and to all the parties to the appeal (including Appellee1's wife's name (but no E-mail) supposedly then it must have been by mail) and (who the Appellant has as Appellee1 being deceased. N.C. App. Rule 33 requires but both were unrepresented, and no one made an appearance for or by either by N.C. App. R. 38). All of this is questionable to not grant the Rule 55 entry of default,. Being that no opinion was filed for this case this Petition's cited cases cited are those of the Petitioner's reasons why this Court should and must grant this writ and provides this Court with an opportunity to review and ensure service (usually as Rule 4) and those purported by the courts to be by West Publishing (By Email) and Lexis-Nexis-(By Email) are received and to the correct parties. Such service Rule 4 mailings to Appellee1 (his wife) were likely returned to the NCCOA—as were those the Appellant serviced to Appellant1 (his wife) during these appellate appeals.

## **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 29, 2023 (date) in

Application No. 23A484.

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

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

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 "...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." 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 shall abridge the privileges or immunities of the citizens of the United States... [or] deprive any person of life, liberty, or property without due process of law, [or] deny to any person within its jurisdiction the equal protection of the laws...."*

By Article IV of the Constitution of the State of North Carolina for judicial members and to as an aggrieved deprived the Appellant of rights secured thereunder to the opinion, the request to provide it and in violating the N.C. Constitution Article I among them N.C Sections § 1, 7,18, 19, 21, and § 25 deprived the Appellant of her civil rights and due process in this litigation.

### **OTHER RELEVANT FEDERAL RULES OF CIVIL PROCEDURE (FRCP)**

Orders are violation of see "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 for review to the U.S. Supreme Court by U.S.C .§ 1257(a). This case began as a Wake

County Superior court (“WCSC”) civil action #18-CV-013119 (October 2018 Complaint) on the foreclosure by the mortgage lender (SECU/Respondent 3) for the Appellant’s mother’s N.C. estate homestead property (which has its own pending estate administration matter) and was for claims against the Respondents 1-4 (ALA, AAK, SECU and WHarazin). After the case and R. 59 motion for reconsideration were dismissed the Appellant filed the o/a 2019 R. 3 notice of appeal with WCSC and the Nort Carolina Court of Appeals (NCCOA). The estate foreclosure action caused the Appellant to pay \$15,000.00 to get it out of foreclosure. The WCSC Judge Gwynn’s 2020 Order dismissed that Complaint and prompted the #22-601 July 25, 2022 appeal. Before this in 2019 Judge Futrell had granted the ‘Defendants’ o/a May/June 2019 Motions to Dismiss (MTD) for #18-CV-013119. Later WCSC Judge Collins’ August 3, 2020 Order denied the Appellant’s MFR of MTD. After Coronavirus delays and rulings the Appellant filed the NCCOA #22-601 appeal and later the NCSC #161P23 § 7A-30 notice of appeal and § 7A-31 filing after the NCSC on August 30, 2023 dismissed the NCSC appeal.

But for this Court it is more than a civil action was filed and dismissed and instead are the questions on how the foreclosure came about and the Appellees’ handling of it—and it as an estate property. Citizen (among them heirs in ‘Wills’) of N.C. and those of the U.S. states nationally have interests in such matters among it transferring property and doing so to the proper receivers and new owners when mortgage deeds are to change hands and payments for these are to be paid to them. This is a legal effort that can be costly and time-consuming and more so for the *pro se* litigant who must deal with the mortgage and estate administration of it. Tis Court has opportunity to lessen this for the

parties of these court proceeding by ensuring they follow the N.C.G. statutes for them, the local and appellate procedures for these proceedings so they can be accomplished properly and with the trust of the citizens, owners, and families (who have to do them). Without doing so the states and citizens nationally will continuously question the judicial system.

Instead these should be properly ruled by the local, state, and N.C. Appellate Rules or the appellate court rules of the various states. In this case the Appellant served the Rule 52/59 motion for Judge Gwynn's February 14, 2020 Order (that had included a Gatekeeping Order (GO) —but with questions of law of its own and is not included in this Petition) to Judge Ridgeway (and by the GO is who was to receive it an approved or not the motions the Appellant felt needed to be file for the foreclosure case)—ruling it out of session. Being so Judge Ridgeway' Order (Appendix B. pp. 98-99) denied the Rule Rule 52/59 motion indicating the Rule 52 was not with the Order (NCCOA-R pp. 6-64) ). The NCCOA appeal followed. Being so his Order did not include 'true' Rule 52 findings of fact, but a paragraph or so denying the Appellant's motion. This is contrary to the local state court rules, FRCP Rule 52, and N.C.G.S. 1-1.52(a). --important to state court litigation, and citizens of North Carolin—when an Order is void of the Rule 52 findings.

When courts do such rulings Appellants (and litigants) are deprived of relief for the loss they caused, and of a 'proper day in court' to resolve it. This mortgage was for an estate matter and a foreclosure of its property by § 45-16 or similar for conveyance of estate property. Much of the #18-CV-013119 lawsuit came about because the Appellant had filed a Caveat action against two of these same Appellees (Appellees1/2) in another

action (for her mother's 'Will' and the intentions of the 'Will'), that ultimately these same two Appellees were parties. Nonetheless the NCCOA Order and dismissal followed and it deprived the Appellant of a protected rights. 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—and when not contrary to Rule 12(b)(6) and Rule 52.

Appellees' (including their attorneys) statements are not the law. When cases are dismissed on their MTD as was the WCSC and later by NCCOA (and NCSC) and these Appellees' statements in their filings include misrepresentations or are contrary to the merits of case (e.g. suggesting it was untimely or to a duty owed) these should be determined as material facts, but were not and yet to be determined—and are questions for review by the appellate courts, and that this Court for such rulings' (as improper by the rules and statutes for mortgage such mortgages and property). It is of importance in litigation and to court rulings that affect litigation of cases by Rule 12(b)(6) and Rule 52. On that alone this U.S.C. 1257(a) Petition should be granted.

### **PROCEDURAL BACKGROUND**

This Petition is for the dismissal for case #161P23 of 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 judgments of the North Carolina Court of Appeals 10th District North Carolina Appellate Court at Raleigh, NC among it for its (the clerk's) March 27, 2023 Order (Appendix A pp. 57) denying Appellant's Motion to Hold April 11, 2023 Oral Arguments (Appendix A pp. 72), May

4, 2023 Order that granted the Appellees' MTD (Appendix A pp. 56) and the last two Orders for the #22-601 case dated June 6, 2023 for amended *en banc* rehearing and the NCCOA motion to provide an opinion see (Appendix A pp. 58-60).

The NCCOA May 4, 2023 and other Orders on appeal provided no opinion (contrary to the appellate rules) or N.C. App. Rule 32 for mandates. The North Carolina Supreme Court (later) further violated the Appellant's relief sought after the Appellant filed the NCCOA #22-601 appeal and the #161P23 in the August 30, 2023 Order for the Appellant's § 7A-30 and § 7A-31) dismissing both on the same day (Appendix C pp.108-109). Both the NCCOA and the NCSC's Orders' seemingly were '*robo-signed*' and setting on its court docket (eFiling system) for a couple of months then abruptly denying them—and a question this Court can review to ensure by granting this Petition to address eFilings as susceptible to this and so it does not happen—turning the appeal of this Cour to the appellants conduct instead of to a proper appeal based on the merits and material facts of the WCSC #18-CV-013119 case and the Appellees conduct. At the same time the NCSC'S August 30, 2023 Order then also 'mooted' the Appellant's Rule 55 default motion (see Appendix C pp. 111-120) for her now deceased sibling ALA (Appellee 1) who clearly was unrepresented in either court's appeal (NCCOA or NCSC, and provided no analysis or opinion for denying Rule 55 default motion.

The Orders were so confusing and in non-compliance with the N.C. Appellate rules that Appellant (who was *pro se*) to file a separate printed record--just shows without an opinion the Appellant had no analysis to provide the proper arguments and clearly this confused and conflicted with the NCSC rules and required new R. 9 and R. 11 filings. 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...."

Indeed transcription contracts by N.C. App. Rule 7 are required (but not necessarily jurisdictional as to require dismissal). And questions state courts and nationally who do so. Indeed dismissal on N.C. App. Rule 25 for the transcription contract and Rule 9 proposed (suggesting that the Rule 9/R. 11 printed record) also is questionable. Litigants often see cases based on transcription contracts but it is to the efforts of the parties to correct the deficiency and as excusable neglect to a case on the merits instead of to procedural defects that does not disadvantaged either party or the state court proceedings—being so this such circumstances of the case in the lower court to the material facts—ultimately dismissing it on R. 7 (in the lower court).

After Coronavirus delays case (on the transcription contract) for #18-CV-013119 by Judge Ridgeway's December 14, 2021 Order denied the Appellant's Rule 52/59 motion and progressed to the NCCOA appeal case #22-601. After the parties filed motions for extensions, notices of representation (or so purported by Appellees1-4 to be a joint one) on May 4, 2023 the NCCOA granted the Appellees' MTD. The NCCOA June 6, 2023 Order in a one-sentence #22-601 Order (Appendix A p. 58) denied the Appellant's motion to stay (in it asking when the opinion and N.C. App. R. 32 or similar analysis would be filed, and was filed to maintain the 15 days for the § 7A-30/§ 7A-31 notice of appeal to this Court. So this Court has opportunity to review the pertinent NCSC Orders for this Petition for the #161P23 case appealing the NCCOA #22-601 dismissal

(see Appendix C pp.107-108) as the final Order from the NCSC (see Appendix C p. 109) indicating the Appellant's § 7A-30 and § 7A-31 filings had been denied.

Orders without an opinion should be voided. Both of these were without any findings of fact (Rule 52 or similar), analysis, or opinion and contrary to the appellate and state court rules. It also did so in denying on the same day the Appellant's. N.C. App. R. 31.1(d) '*Motion for en banc rehearing*' (Appendix A p. 59) and purported judge panel's denying *en banc* Order (Appendix A p. 59) on June 6,, 2023 —such timeline the same day clearly was questionable and was just to 'clear' the NCCOA docket, was noncompliance with the N.C. appellate rules, and prejudicial to do so and/or was a *robo-signed* Order—which this Court should remand, reverse and rescind as appropriate and use this Petition to ensure opinions for each case is provided whether published or unpublished.

## **STATEMENT OF THE CASE**

### INTRODUCTION

#### Why These Dismissals Have Importance for the Petition's Review

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' (handling the case—who are to be officers of the court) conduct should be questioned as improper and as claims of rights and constitutional violations, and as legal malpractice (negligence) against such attorneys. Both the NCCOA and NCSC erred in its rulings. This Court must correct these rulings and deter attorneys from continuing such conduct when they knowingly file replies 'to make themselves look good', 'get court experience' or for some other personal motives or endeavors that benefit

themselves instead of the rule of law and who deny their wrongs and avoid compensating Appellants' who have incurred a loss at the hands of such, and attorneys and the judge-panels who fail (as did these) to correct either these attorneys' conduct (as prejudicial) or who do not determine the appellant's valid claims or merits.

But attorneys and judges do and might think of court proceedings as no duty (and often thought-of as being adversarial), but due process and cases as adversarial are two different things and in doing so should correct rulings and judicial errors and stat courts and nationally must ensure this and it 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 are discriminatory to *pro se* litigants in state and district court and courts of appeal and 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 this Petition is premised on the due process, deprivation of it, and equal protections in the Bill of Rights and 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 is to provide. 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....”

Whether in a federal district court or district court of appeals judicial actors are accountable for non-compliance with the N.C. Appellate and other appellate rules. Being so this Petition asks this Court to exclude any purported immunity defense for these Orders (as judicial actors' decisions) but to determine its arguments as rulings void of an opportunity for a true 'day-in-court' for the #18-CV-13119 lawsuit and for claims just upto November 2018. It explicitly requests that this Court exclude in its ruling the discussion of U.S.C. 1983 claims and by it does not waive to file those claims later in a separate appropriate action and court.

Without Congress, legislation, and courts requiring attorneys and judge-panels (or the judicial systems) to provide supporting rulings and do so by the appellate courts rules citizens of North Carolina. (*pro se* or represented parties) and in other court jurisdictions will suffer and so will their belief that courts are or will be fair in litigating their disputes. See *Deminski v. State Bd. of Educ.*, 858 S.E.2d 788, 2021 NCSC 58 (N.C. 2021). "...is 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." This Court must rescind, reverse and remand the Orders that dismissed case #22-601 and #161P23. Doing so will serve justice in N.C. courts instead of attorneys' and Defendant- parties' ill-will conduct to not correct or right their wrongs or judge-panel (who we hope allowed these appeals to 'fall-through-the-cracks'), and so the Petitioners are allowed a proper 'day-in-court' and so as to determine the case's merits and for this lawsuit affecting the mortgage foreclosure (N.G.S. 45-16) or similar and them for an estate property.

**STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW**

We know a ruling without a proper NCCOA and NCSC opinion (or one with a similar FRCP 52 findings of fact filed) prejudices the Appellant, and the Petition becomes a case questioning the appellate courts' (NCCOA and NCSC) conduct instead of to the merits and evidence of the Wake County Superior Court case #18-CV-013119 case for the foreclosure action on the Plaintiff's mother's N.C. mortgage property. For the Appellant if denying the Appellant's 'Motion for Reconsideration' (MFR) of Judge Gwynn's February 14, 2020 Order that had denied the Appellant's o/a December 2019 notice of appeal based on the Defendants' 2019 N.C. App. R. 25 MTD based on the transcription contract (but is contrary to the timeliness of it) and was to be determined.

This Petition provides this Court with the opportunity to ensure the lower court provided a proper review for a dismissal (including a Rule 12(b)(6)). This questions the dismissal as improper and as NCCOA's non-compliance and clearly is of national importance to state courts 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*...."

**REASONS FOR GRANTING THE PETITION**

NCCOA Except for Motions for Extensions the Orders Seem to be Robo-signed as an eFiling System

Rulings should not arbitrarily deny motions or appeals without supporting them by findings of fact. But the NCCOA's #22-601 (Appendix A p. 58) dismissal did, and was for the Appellant's 'MFR to stay the mandate (and in it asking when the opinion, R. 32 mandate or similar analysis by the NCCOA would be filed—instead NCCOA denied the motion in a one-sentence Order—and was contrary to the rules for opinions. See *Id Blue v. Thakurdeo Michael Bhiro, P.A.*, 871 S.E.2d 691, 2022 NCSC 45 (N.C. 2022) “....the Court of Appeals looked to whether the trial court "consider[ed] ... matters outside the pleading[ ]." *Id.* , 853 S.E.2d at 261. The Court of Appeals acknowledged that "memoranda of law and arguments of counsel are generally 'not considered matters outside the pleading[ ].'"

But doing so affects the Appellant's substantial right to a review of the merits of the #18-CV-013119 lawsuit on the foreclosure and so do states nationally or by N.C.G.S.§ 45-21.16 or similar (for foreclosures and conveyance of estate property). See NCCOA denying the Appellant's March 24, 2023 (Appendix A p. 57). a separate 'Motion to Hold Oral Arguments on April 11, 2023' that the Appellant filed after receiving the Order that none would be held—and was prejudicial to the Appellant's rights to them or as a resolve for these again seemingly *robo-signed* Orders. This questions the authenticity of the #22-601 Orders, the judge-panel's or NCCOA's ~~fairness~~ to a correct ruling and importance in states and nationally for the litigation of appeals to an automated system—and the May 19, 2023 'En banc rehearing' motion by N.C. App. R. 31.1(d) --denied the same day on June 5, 2023, which was in reply to the May 4, 2023 Order (Appendix A) that granted the Appellees' MTD. These denials for appellant litigation in state court and nationally questions such Orders, and without an opinion violates the N.C. Appellate Rules and

FRCP. This Court must review and ensure Orders are ruled properly—and this Petition and appeal provides this Court with an opportunity to do.

#### N.C. Courts and Its Citizens' Interest in Rulings

Courts should not grant motions to dismiss without support or to review the rulings, which causes improper, no relief, or relief to the wrong party and turns cases (and the WCSC case #18-CV013119) into questions on the appellate courts' conduct and noncompliance with the appellate rules. Appeals should allow rebuttal to the issues and merits of case dismissals—not dismiss them without the material facts. The Appellees/Defendants' roles to the 2018 lawsuit was for the loss incurred by paying the foreclosure up). The Appellees have yet to be properly held accountable for their roles in the foreclosure as an estate matter. Mortgage holders and estate heirs in the state courts are likely and required to use more time and effort to litigate their cases when appeals and petitions are deficient.

Often this is an unjust error but reversible in lower court proceeding if it had provided the Rule 52 findings—and for *pro se* litigants it is more likely to happen and who are those who have limited resources for their cases (or as the Appellant having spent \$15,000.00 already) and is deprivation of due process and equal protection nonetheless. 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....”—clearly was not by the N.C. Appellate Rules, not in compliance, and affects mortgage property. It now requires this Court to ensure rulings nationally are properly decided—by supported findings. See *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.”

The Orders in doing so alone questions Orders as being contrary to the ‘rule of law’, violation of appellants’ constitutional rights to a ‘proper day in court’ and improper mortgage transfer to owners and heirs—but denied relief as it were by the purported three-judge panel purportedly reassigning the case on March 20, 2023 indicating it would be Judge Valerie Zachary, Judge Hunter Murphy, and Judge Jeff Carpenter instead (all questionable and to the dismissal as 14th Amendment and constitutional rights’ violations)—denying the Appellant’s motion to stay the mandate until the judge-panel provided a proper opinion or Rule 52 findings of facts and these Orders’ meaning e.g. and in a couple of sentences saying: (1) no opinion would be filed and (2) its March 3, 2023 Order denying it—whether unpublished or published and require for subsequent filing (e.g. USC 1257(a))

We know N.C. courts and N.C. citizens have an interest in proper rulings for mortgages and titles of real property for estates—as do homeowners and estate beneficiaries nationally—and it affects them economically—but continuing to ignore or review the merits of the case further disadvantages court litigants (such as the Appellant). This Petition allows this Court an opportunity to correct or ensure such mortgages are being properly dispensed to the rightful owner and in a timely manner.

**NCCOA Orders Violated U.S. Constitutional Rights, Due process, and N.C. Constitutional Rights and N.C. Appellate Rules for Case Dismissals**

Where judicial actors such as judges rule on an appeal the appellate rules and the N.C. and U.S. Constitutions protects the citizens of the state(s) against deprivation of

them 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 a 14th Amendment violation and the N.C. Article IV for judicial Court of Appeals, Appellate Courts, Superior Court members and ‘state actors’. Indeed the R. 11 printed record required filing and was filed July 25, 2022 for use in the NCCOA appeal—clearly these Orders did not review any of the record or just some of it (in a one-sided fashion) then granted the Appellees’ MTD—and was without any citation to or review of the Appellant’s brief or reply to the MTD—and being so is an arbitrary ruling contrary to the appellate rules and for R. 12(b)(6) dismissals.

Ruling in this way further fails litigants and the judicial system. Although the Appellant’s case is not on education but is no different than protections for mortgage property and estate heir rights in court proceedings and judge-panel rulings as this judge-panel among them as Section § U.S.C. 1983 conduct. See *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....”—by this Petition this Court has the opportunity to ensure courts’ compliance with statutes for estates and mortgages and do not deprive an appellant to a proper ‘day-in-court’, equitable relief or do so *sua sponte*. When lower court and these appellate dismissals fail to proper procedures and rules it also fails the 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....” .

### **QUESTIONS TO BE REVIEWED BY THIS COURT**

Question 1: Whether 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 and is of National Interests to Litigation

Parties are to file notices of representations and within 14 days of docketing the appeal. The Appellant filed NCCOA non-extension motions including requesting the N.C. App. R. 38 (as *infra*) substitution for Appellee 1. These Orders all seemingly after a few days seemingly were just *robo-signing* of the Orders denying them with no analysis, Rule 52 findings of fact or similar included. The Appellees except for SECU/Respondent 3 (mortgage lender) clearly did not provide a proper R. 33 notice of representation or do so within the time allowed and did not request an extension to do so—just ignoring R.33 – knowingly and willfully misrepresenting who their attorney was, and Appellees 2 and Appellee 4 seemingly who are N.C. lawyers but not admitted to practice before the NCCOA just ignored filing anything for R. 33 –purporting instead to have Duane Jones of HedrickGardner.com file a joint motion to dismiss—and material facts are what allow or not Rule 12(b)(6) dismissals. See NCCOA case’ docket filings (Appendix A pp.63-69)

See *Tully v. City of Wilmington*, 249 N.C. App. 204, 790 S.E.2d 854 (N.C. Ct. App. 2016).... [and as was NCCOA and NCSC] a case failing to comply with its own promotional policies and procedures.”--and was its violation of the N.C. App. Rules and the U.S. Constitution to deny the Appellant the proper notice of representation notifying the court of it and is violation of the Appellate Rules, and the U.S. Constitution to deny the Appellant the proper representation and of whom to discuss the case with including any for settlement of it. *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: Whether NCCOA and NCSC – Improperly Denied Appellant's R. 38 Motion for Party Substitution and Being So Is of National Interests to Litigation and is of National Interests to Litigation

As with the R. 33 motions N.C. App. R. 38 motions are required for substitutions. The Appellant filed another non-extension motion for the substitution for Appellant1 December 8, 2022 and was denied--seemingly just robo-signing of the Order with no analysis and or a (FCRP) Rule 52 findings of fact or similar included or any judge's signature indicating that it had been reviewed properly. By *id Tully* this is violation of the U.S. Constitution to due process to deny the Appellant the proper parties. The motions or replies for the R. 33 and R. 38 deficiency should have and were filed about Appellee1—but also NCCOA did not do *sua sponte* See *id Kinsley v. Ace Speedway Racing, Ltd.* (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)...."

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...." and contrary to the appellate rules and important to citizens of N.C. and nationally that litigants (*pro se* and others) be provided impartial rulings. See a criminal case that discusses constitutional rights and due process, violations of judges and against clerks for known violations of N.C. Appellate Rules and opinions but discusses due process. *Williamson v. Stirling*, 912 F.3d 154 (4th Cir. 2018) “.... As required by Federal Rule of Appellate Procedure 28, both parties' initial appellate briefs included jurisdictional statements....under § 1291. The appellees' supplemental submission — contending that the district court never rendered a final decision — contradicts their initial appellate brief....”

Clearly NCCOA denied these and later ignored the Appellant's #22-601 Rule 28 brief altogether—not reviewing it in the Order. 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.

See *Sessions v. Sloane*, 789 S.E.2d 844 (N.C. Ct. App. 2016) "... but objections "made and established on a document-by-document basis" are sufficient to assert a privilege.... [Rule 26 discovery questions....]" This case discussed administering justice. But unlike *id* *Sessions* the NCCOA and NCSC Orders denying it affected a substantial right, was not any privileged information and if Respondents1-4 had a substitute or who had or knew of someone (of Respondent1' estate) who it should be, was not a product or protected doctrine request, or for them to timely assist the appeal (NCCOA and NCSC) to provide a R. 38 substitution for Respondent 1 [ALA the Petitioner's sibling]. *Id Sessions* was no different than the Petitioner's request for a consent or request of Respondents1-4 for information for or about the Rule 38 substitution or the same of the NCCOA motion and to prevent undue delay for the case—just ignored these deficiencies and granted the Appellees' MTD instead—violating constitutional rights, appellate rules, and due process nonetheless.

Question 3: Whether NCCOA and NCSC – Improperly Deny Appellant's Motion for Mediation and Being So Is of National Interests to Litigation and is of National Interests to Litigation

Clearly N.C. courts favor settlement of disputes—thus lack of good-faith (bad-faith) to resolve the dispute or the appeal. The Appellant filed a motion and included it in replies for court-appointed or paid mediation in non-extension motions but was demoed. See <https://appellate.nccourts.org/Mediation/Consent.pdf> "...it was allowed [by the court rules] and should have been provided and granted as an option....". When this is done it questions compliance with the N.C.G.S. statutes, and the N.C. Appellate rules for settlement of cases in the courts (superior, court of appeals and district courts). Indeed

the motion was filed for it (Appendix C p.. 108) arbitration/mediationa) “....[Appellees/Defendants] could have opted to request private mediation or court-appointed mediation”] in reply to the request/motion for it.” The Appellees did not consent and NCCOA court denied it and did not do so *sia sponte* . See *Mitchell v. Boswell*, 851 S.E.2d 646 (N.C. Ct. App. 2020) “....[here the parties were] ordered by the Superior Court to participate in a mediated settlement conference....The controlling statute of frauds for settlement agreements resulting from mediated settlement conferences is N.C.G.S. § 7A-38.1(l). N.C.G.S. § 7A-38.1(l)[mediation]....”

If mediation and jury trials are allowed why were they not provided—except if it were err or non-compliance with the rules and statutes for them. See and N.C.G.S. § 7A-38.1(m) Right to jury trial. - Nothing in this section or the rules adopted by the Supreme Court implementing this section shall restrict the right to jury trial....” Not only does mediation provide opportunity for settlement it is clear settlement of cases is preferred the court, and the N.C. Supreme Court § 7A-37 and § 7A-38 options included alternative dispute resolution for cases in its jurisdiction and the judge-panel could do so *sua sponte*—but did not. See *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.....”

Attorneys are to conduct themselves by the professional rules for their state courts and those courts nationally—but not do as purported adversary incur further loss to appellants or do so in bad-faith. Indeed Appellees 2-4 each violated professional rules of conduct, N.C.G.S. 75-1, had mortgage statue violations for debts, and N.C. App. Rules, Rule 25(b). When they do not comply with these rules and statutes as officers of the court to have ignored arbitration and mediation (court-appointed or paid mediation). For this appeal these Appellees knew the NCCOA and later NCSC also had improperly denied any such mediation session. This Petition provides this Court an opportunity to review unsupported rulings and purportedly ‘*robo-signed*’ rulings for the Order not a decision by a judge (or the judge panel assigned) ( Appendix A p. 60-61), violates its own N.C. Appellate. Rules, case law, and deprives appellants of due process in doing so.

These rulings are also violation of 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 ....”—indeed such deprivations should be reviewed and correct *sua sponte* or by this Court. *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 imposesliability for engaging in a constitutionally protected right....” By *id Kinsley* (2022) “....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 *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 rights are protected by the State (and U.S.) Constitution.as in *Howell* citing *id Deminski* (2021) also provides 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 home and mortgages and heirs when deprived and did for the Appellant and of her interest in it and as an heir and any loss for the estate.

Question 4: Whether 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 Litigation

As in the similar discussions above Orders denying *En banc hearing, and Motion to Stay Mandate as these* (supplement the record Appendix A p. 64 docket sheet) deprive Appellants of a constitutional rights and due process—turning the appeal into a distinct case against the appellate courts instead of to the merits of the case and the appellees' role in a lawsuit filed against them. Granting this Petition will allow this Court to review such deprivations and remand those as without an opinion should do for violations of the 14th Amendment to the Constitution of the United States, Article IV of the Constitution of the State of North Carolina for judicial members, and Article I of the N.C. Constitution.

Such dismissals as these disadvantage appellants and more so when they are unsupported rulings and are seemingly just these courts' clearing its calendar and docket. See *Williams v. Stirling* [if][his] conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known...To overcome a defendant's claim of qualified immunity, the court must determine: "(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct...." *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..."

Orders contrary to Rule 12(b)(6) dismissals, N.C.G.S 1-1 Rule 52, state courts and this Court's rulings we know require 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...." See *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*...."

The U.S.C. 1983 statute provides for review and relief against judicial actors By that alone this Court should rescind, reverse, and remand the case and Order the NCCOA three-judge panel (Judge Valerie Zachary, Judge Jeff Carpenter, and Judge Julee Flood)

to provide the required opinion,. See U.S.C. 1983 “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding....” Granting the Appellees’ MTD was violation of the U.S. Constitution to deny the Appellant the proper parties or to not include or review or cite the Appellant’s NCCOA Rule 28 brief filed for the appeal’s dismissal—all questionable to the ruling.

See *Lannan v. Bd. of Governors of the Univ. of N.C* (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 “.... (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)....” 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 a 14th amendment violation .See *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,. See the 14<sup>th</sup> Amendment “....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....”

An appellant timely raising questions about the opinion before and in subsequent motions maintaining it as improper and asking when the opinion or similar analysis would be provided shifts the burden to the lower and appellate courts—not on the appellant. 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 (which discusses it as an estate matter as is the WCSC Order). This Petition provides for this Court to review the NCCOA and NCSC’s doing so by requesting both of these appellate courts provide the proper Rule 52 findings of fact and opinion. *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 and lower courts’ Order (and it for Rule 52)—whether jurisdictional or nonjurisdictional. *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.”

A useful case discussing this is by see *In re Custodial Law Enf't 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." See *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."—indeed any state courts would have reason to *sua sponte* grant the motions in this Petition—and is of interest to N.C. citizens and nationally and to deter 'bad' and unsupported rulings.

Question 5: Whether NCCOA and NCSC Orders Violate Constitutional Rights and N.C. Appellate Rules by N.C. G.S. § 7A-30 or § 7A-31 for Affirming or Dissenting Opinions and Is of National Interests to Litigation

As in the other questions requesting review there is no analysis or affirming or dissenting opinion to use in the NCSC appeal or for this Court. See *Exhibits 1-4A/Appendix 1*). Although a 2002 case (and today courts usually prefer citing post-2007 cases) see *Pineda-Lopez v. Growers Association, Inc.*, 151 N.C. App. 587, 566 S.E.2d 162 (N.C. Ct. App. 2002).... Because the order of the trial court violates the mandate of Rule 52 of the North Carolina Rules of Civil Procedure to make separate findings of fact and conclusions of law, we vacate the order and remand it to the trial court to comply with the rule....Rule 52(a)(1) which governs findings by the trial court in a nonjury proceeding states that: In all actions tried upon the facts without a jury or with an advisory jury, the court *shall* find the facts specially and state separately its conclusions of law thereon and direct the entry of the

appropriate judgment.”—So it is for state courts and nationally in compliance for opinions and Rule 12(b)(6) dismissals or for a FRCP for Rule 52—and err for both appellate courts to not provide or rule to have non-compliance with a procedural rule, statute or deprivation of right corrected or remanded to do so.

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. 11 pleadings. When a party knows (as did these Appellees and court) both the R. 33 and R. 38 were deficient this further questions the judicial panel’s conduct as contrary to the appellate rules. 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 to the citizens of North Carolina. 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.

Petitioner’s Further Support for Granting This Petition  
N.C.G.S. Violations and Non-compliance Denied the 2018 WCSC Lawsuit’s Merits  
NCCOA’s #22-601 dismissal denied the Appellant a substantial right to the material facts of the Appellees’ improper conduct and noncompliance with and questionable of it

by at least N.C.G.S. § 28A/29 and mortgage statutes for estate administration and the conveyance of its property and for the Appellant's mother's estate property. The printed record was filed on the Appellees' conduct and Judge Gwynn's February 14, 2020 Order (Appendix B pp. 88-95), and later Judge Ridgeway's December 13, 2021 (denied MFR Rule 59 (Appendix B pp. 88-95), and later December 18, 2021, and December 20, 2021 (Appendix B pp. 97-98 ) Orders just ignored and denied reviewing the question of how the 'Will' affected the lawsuit and was improper to do so, or on the #16-WCSC-01390 case's R. 7 transcription contract, or as R. 2 relief and the motions for them, and the Appellant's MTD. See *id In re Estate of Harper* "...Consequently, when sitting as an appellate court, the superior court shall proceed "as if no hearing had been held by the clerk and without any presumption in favor of the clerk's decision." Indeed WCSC Judge Gwynn's 2020 Order should have provided and determined the foreclosure and its affect on the § 28A/29 estate administration, but failed to—violating heir rights, due process and the Appellant's right to a 'proper day-in-court'—and is of national importance to litigating and an appellee's good-faith—and fails by statutory a\law and is a deprivation.

An estate proceeding such as the one that this mortgage was for did not comply with the N.C.G.S. 28A/29 for probate, contesting 'Wills' and how they affected the 2018 foreclosure. Where it does not provide relief the Appellant's discovery of it by § 1-52 and § 1-15, equitable relief or as 'declaratory judgment' relief by. §1-253 and as a remedial action by § 1-264 and local Rule 26, in the questions on the 'Will's construction should be provided to the Appellant and were not determined and denied, and Judge Gwynn's February 14, 2020 Order (Appendix B pp. 88-95) (abeyance or a stay, R. 2 relief or granting an extension for the #18-CV-013119 R. 7 transcription contract and R.

11 proposed record—dismissal was not the proper relief)—and derivation of the Rule 52 and findings of fact to determine who the mortgage holder and new owners were to be.

. See *In re Estate of Harper*, 269 N.C. App. 213, 837 S.E.2d 602 (N.C. Ct. App. 2020) “.... the superior court applied the incorrect standard of review. On appeal of the clerk's order in this special proceeding, the superior court was required to conduct a hearing *de novo....*”

Indeed opinions are required and without them are contrary to the N.C. Appellate. Rules and Rule 52 findings of fact, motions, Rule 28 briefs to use for any filing for relief. See a constitutional rights' free speech case *Corum v. University of North Carolina*, 330 N.C. 761, 413 S.E.2d 276 (N.C. 1992) “....State Constitution against state officials for violation of rights guaranteed by the Declaration of Rights...Having no other remedy, our common law guarantees plaintiff a direct action under the State Constitution for alleged violations....North Carolina [is] consistent with the decisions of the United States Supreme Court and decisions of other state supreme courts 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 Tully* (2018) “...[citing] *Corum v. University of North Carolina* [(1992)] the 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 interestunder the [Constitution], a party must show...he must have a legitimate ... entitlement...” If the lower court does not view opposition motions or briefs why do Congress and the procedural rules and statutes require filings these and that they be timely

or have due dates.—clearly these are material facts to the estate mortgage and its affect on any estate administration—and on filing the N.C. App. R. 7 transcription contract. This Petition provides this Court the opportunity to review this and to ensure state (lower or appellate) courts' rulings for motions are not void of findings or violate the N.C. and U.S. Constitutions or laws for consumer mortgages and conveyance of estate property and heir right.

In *id Feeassco* the sanctions were granted against the Defendants for their conduct. This is no different than the Appellant's right to have any constitutional due process rights the Orders denied determined and corrected for estate administration and foreclosure proceedings for them e.g. by N.C.G.S. 45-16 or similar statutes. See *Id Boswell* "....In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context...." The Order for case #161P23 further violated due process and these rights.

Violations of due process procedural and it as judicial actors conduct are reviewable by district courts, district courts of appeal, and this Court. See *Williamson v. Stirling*, 912 F.3d 154 (4th Cir. 2018) is a criminal case and discusses constitutional rights and due process judges and against clerk for known violations of N.C. App. Rules and opinions [citing "...("A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.") ..... Section 1983 authorizes a plaintiff to sue for an alleged deprivation of a federal constitutional right by an official acting "under color of" state law....Under our precedent, clearly established law encompasses "not only

‘specifically adjudicated rights,’ but also ‘those manifestly included within more general applications of the core constitutional principles invoked.’....”

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 see a board of education case on due process *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.”....” This includes protection by *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....”

It is and was err by FCRP Rule 52, Rule 56 (which is also questions a rulmg as summary judgment) and Rule 12(b)(6). See *id Deminski* “....The 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 .... The fundamental purpose for its adoption was to provide citizens with protection from the State...upon these rights....” NCCOA did not hold Oral Arguments on April 11, 2023 or do so although the Appellant filed the motion for it—seemingly another *robo-signed* Order. See *id Deminski* “....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....”

See *In re D.E.M.*, 257 N.C. App. 618, 810 S.E.2d 375 (N.C. Ct. App. 2018) a child custody case on Rule 52 citing *id Pineda-Lopez v. Growers Association, Inc.* “.... We vacated and remanded the trial court's order...because "the trial court here made no findings indicating that it considered the limitations of respondent-mother's incarceration, or that respondent-mother was able but failed to provide contact, love, or affection to her child while incarcerated....We conclude that the trial court failed to enter adequate findings of fact to demonstrate that grounds existed pursuant...and failed to list its Findings of Fact and Conclusions of Law in accordance with Rule 52....” Thus judicial proceedings should not deprive litigants' of protected rights. See *id Tully* citing [....Arbitrary and capricious acts by government are ... prohibited under the Equal Protection Clause[ ] of ... the North Carolina Constitution[ ]. No government shall deny any person within its jurisdiction the equal protection of the laws. The purpose of the Equal Protection Clause ... is to secure every person within the [S]tate's jurisdiction *against intentional and arbitrary discrimination* , whether occasioned by express terms of a statute or by its improper execution through duly constituted agents....*Dobrowolska v. Wall*, 138 N.C. App. 1, 530 S.E.2d 590 (N.C. Ct. App. 2000)....The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.' Only after finding the deprivation of a protected interest do we look to see if the State's procedures comport with due process."].

So what forum should now hear this case's merits or provide relief). See *Blue v. Thakurdeo Michael Bhiro, P.A.*, 871 S.E.2d 691, 2022 NCSC 45 (N.C. 2022).... The 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.... Further, the Court of Appeals majority did not determine whether the trial court properly denied plaintiff's motion for leave to amend his complaint nor whether the trial court properly granted defendants' motion to dismiss...."....the ultimate question was whether property owners would be compensated by the government for flood damage to their home...." Contrary to the Appellant's case *Blue v. Thakurdeo* NCCOA's Order did not provide an opinion (or ensure WCSC provided the Rule 52 findings)Orders.

### **CONCLUSION**

The NCCOA's #22-601 and NCSC #161P23 Orders fail for dismissal among other things are contrary to the N.C. Appellate Rules for disposition and opinions and violates 14th Amendment and Due process, failed to comply with the see *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....". Judge panels (and local judges) are to rule by their jurisdiction (federal court, district court), local and appellate rules for their state and findings of fact, See a Fifth Circuit and Texas case *id Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 211 L. Ed. 2d 316 "....[Ex parte Young]....All the objections to a remedy at law as being plainly inadequate are obviated by a suit in equity, making all who are directly interested parties to the suit, and enjoining the enforcement of the act until the decision of the court upon the legal question....[or injunctive relief] for federal and state laws...."

This assigned judge-panel or (NCCOA) failed by see *id Tully* “.... [argument] is supported by persuasive federal case law and is in keeping with our State's constitutional jurisprudence....” The rules expect litigants to file their motions and legal filing by Rule 11. Contrary to that the Appellees who ‘without a word’ continued their wonton conduct correct the deficiency of the R. 33, R. 38, the opinion, and N.C. App. R. 32 mandate. The U.S. Constitution provides against deprivation in the due process and equal protection clauses.—and by those clauses that the Orders failed. 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 mistakes. ....Thus, § 1983...was "to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.' ....this Court has ensured that constitutional rights "can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes ... whether attempted 'ingeniously or ingenuously....'" *Id Skinner* (2016) “...."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."....”

The NCCOA Judge-Panel Violated the N.C. Appellate. Rules and N.C. Citizens' Trust  
Being assigned to the judge-panel and holding oral arguments are responsibilities of judicial actors in appellate courts and the states (N.C.) or without them were to review and the material facts(on or contrary to foreclosures by § 45-16 for of her mother's estate, a debt that was not the Petitioner's and who further paid monthly payments going

forward into 2019 and for estates. Litigation does not require ill-will appellees' (such as these) who also long-ago could have provided some meaningful settlement discussions with the heirs about their mother's estate property and how to convey it—but did not. Citizens of N.C. (and state courts and nationally) expect courts, judicial actors (such as judge panels) who promise to uphold the U.S. and N.C. Constitutions in litigation and disputes (which it is clear Judge Valerie Zachary, Judge Jeff Carpenter, and Judge Julee Flood's Orders and failed to do if they review the appeal at all, which this Petition questions) and fore N.C.G.S. § 28A estate administration, N.C.G.S. § 45-21.16 or similar (for foreclosures and conveyance of estate property) for Rule 12(b)(6) dismissals. This Court must correct NCCOA and NCSC's errors by granting this Petition, and

By doing so judicial rulings and litigation can better follow the appellate rules, N.C. and federal statutes, rules and procedures used for resolving N.C. citizens' civil disputes, estate proceedings protect the due process and equal protection clauses. This Petition provides this Court an opportunity for N.C., states and nationally for judicial proceedings. It also can protect questionable state and nationally courts' eFiling systems and whether it is sending '*bogus*' or '*robo-signed*' Orders that dismisses cases without the proper human intervention. The Appellant asks and this Court must grant this Petition and to allow additional research for and to determine statistics for such procedural due process, and among *pro se* litigants who sometimes litigate cases themselves—indeed having already paid a \$15,000.00 foreclosure—clearly something was wrong and deprived the Appellant of some rights, and based on these Orders were unfair, inequitable, and noncompliance with the N.C. judicial courts, procedures, and processes in its rulings—which clearly are contrary to its own N.C. Appellate rules and rulings,

(and likely have rendered inappropriate and unsupported decisions in cases for years), and contrary to those decisions of this Court.

Respectfully submitted,  
This 25th day of January 2024.



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