JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Family Court
(Incumbent)

Full Name: Deborah Neese
Business Address: Saluda County Courthouse
100 E. Church Street
Saluda, South Carolina 29138
Business Telephone: (864) 445-4500 (Saluda)
(803) 785-8450 (Lexington)

1. Why do you want to serve another term as a Family Court Judge?

   I find the work stimulating, challenging, and rewarding. It provides a continuous learning experience and a vehicle for positively impacting the lives of others. I can only hope that I have made a significant contribution during my first term on the bench and would strive to do so if reelected.

2. Do you plan to serve your full term if re-elected? Yes.

3. Do you have any plans to return to private practice one day?

   If reelected, no.

4. Have you met the statutory requirements for this position regarding age, residence, and years of practice? Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

   The Canons of Rule 501, SCACR, in general, prohibit *ex parte* communications. They are permitted for administrative and scheduling purposes or in certain emergency situations, but only if no tactical advantage is gained and there is prompt notification to other parties who may request an opportunity to respond. There is an increasing problem with *ex* parte communication by way of email, sent to a judge with opposing counsel copied but without prior notification. A trained and experienced administrative assistant can be of great value in screening such contacts, and my practice is to forward all emails and correspondence for that purpose. In Family Court, there is specific statutory authority for *ex parte* orders relating to child custody, child support, and restraining orders. Emergency hearings are frequently granted by way of *ex parte* orders, including those involving child neglect and abuse.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

I would recuse myself in any case where my impartiality could be reasonably questioned. I would adhere to the Canons of Rule 501, SCACR, and recuse myself in any case in which I had personal knowledge of the facts or an interest or a close relationship with a party or attorney. I do not believe that recusal is required solely due to the appearance of a lawyer-legislator, and I would apply the same philosophy to those cases. I do not refer to a lawyer-legislator by his or her legislative position when in my courtroom. My time in private practice was in the late 1980's, and I was not a partner in the firm. I would err on the side of caution after disclosing my past association with the firm. Once recused, I would not reconsider my decision. However, every effort should be made to prevent judge-shopping by a given litigant or attorney and to prevent the unnecessary loss of docket time or unnecessary delay in a case.

7. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

I would listen to the positions of all parties and would give great deference to the party requesting my recusal. I would choose to err on the side of avoiding the appearance of any bias, impartiality, or impropriety and would tend to grant the motion.

8. How do you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

I would recuse myself based upon any financial interest and if anything more than just a casual social relationship existed.

9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

I accept gifts from family and close personal friends. I accept social hospitality from these same people and from such organizations as my church or other church groups and community historical, educational, or charitable organizations. I attend state and local Bar association activities and socials open to lawyers and judges in general and events approved by the Chief Justice or Court Administration. I have found that this position has an isolating impact on social life in general, and I have not experienced the problem of others outside my close circle offering gifts or hospitality.

10. How do you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

If the misconduct involved a violation of the Code of Judicial or Professional Conduct and raised a substantial question of fitness, I

would report it to the appropriate disciplinary authority, consistent with the Canons of Rule 501, SCACR. While I have on several occasions in the past five years felt the need to remind counsel of their Oath of Civility, I have not made such a report. If I issue a Rule to Show Cause to an attorney based upon the lateness of an order, I would have to report that action. I have not issued such a Rule, to date.

11. Are you affiliated with any political parties, boards or commissions which, if you were re-elected, would need to be re-evaluated? No.

12. Do you have any business activities that you have remained involved with since your election to the bench? No.

13. Since family court judges do not have law clerks, how do you handle the drafting of orders?

For the most part, the drafting of a proposed order is assigned to one of the attorneys, usually that for the prevailing party in a contested matter or the Plaintiff's counsel in an uncontested matter, unless the attorneys agree otherwise. Once I receive the proposed order, I review it and may make revisions. If those revisions are substantial, I request the order by email so that I have the document to revise. I use my notes to recall testimony and evidence that supported my ruling and can obtain access to the tapes or a transcript of trial, depending on length of time involved. If necessary findings and factors are not included in the proposed order, they must be added. In some instances, I send the order back to counsel with instructions to revise it. There have been a few cases where, following trial, I have asked both attorneys to draft a proposed order. In pro se matters I use form orders of dismissal and continuance and usually have to resort to a Bench Order if a contested matter is heard. While a pro se party is responsible for the order, as a practical matter, most of the orders would never be submitted. This would result in loss of docket time, problems for the Clerk's staff, and delays in the case. In some circuits, someone from the Clerk's staff is present in the courtroom to draft form orders in pro se matters, but that is not done in my circuit. Quite often there is no time for me to draft the order following the hearing, given time constraints and the other cases set on the docket, so I try to have it signed and filed by the end of that term of court.

14. What methods do you use to ensure that you and your staff meet deadlines?

Regarding our MUA report on signed orders, I have adopted a computer spreadsheet that my administrative assistant uses, in addition to a notebook of hard copies of the dockets and note sheets for each term of court. My administrative assistant also keeps a calendar on the computer which notes special events or deadlines.

Prior to the due date for an order, my administrative assistant sends a fax reminder. Telephone calls are then made just prior to the tenth of each month when the MUA report is due, for any orders not received. If the proposed order in a case exceeds the 30-day deadline, I have issued orders setting a "drop-dead" date for receipt, and if that is not met, a Rule to Show Cause would issue. I have not had to take the latter step, to date. In certain situations, I allow orders to go on my late report without going through this procedure, such as a lengthy trial or a case in which I take my decision under advisement or give the attorney additional time for drafting.

15. What specific actions or steps do you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

Because cases are not assigned to a single family court judge to follow, it is difficult to provide ongoing monitoring. Issues are usually raised in the course of a hearing or in reviewing a file prior to a hearing. I look for the necessary GAL affidavit of qualifications and, in a few instances, have noted that the affidavit had not been filed or that an uncertified GAL (for private work) had been appointed; I ordered, *sua sponte,* that those situations be rectified. The conduct and performance of the GAL can be raised by any party while a case is pending or can be an issue at trial.

16. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

I would not engage in "judicial activism." I believe that trial judges apply the current law to the given facts. Trial judges also adhere to public policy of the State and, in doing so, could be viewed as promoting or implementing it.

17. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

I serve on the Family Court Bench-Bar Committee. I have participated in two Lexington County Bar CLE Family Court Judiciary Panels. I am scheduled to speak to the Advanced Legal Profession class taught by Desa Ballard at the USC School of Law in November 2012. I have found that I am on the road for close to two hours every day and work frequently on week nights and weekends to stay current on orders and work-related matters. My time for additional activities has been curtailed more than I had expected.

18. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

The position certainly has an isolating aspect, and you find that your close circle becomes smaller. The strain on personal relationships

appears to be more of a lack of time to maintain the relationships the way you would prefer, due to the inflexibility of the position.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

Although the very definition of *de minimus* in the Canons indicates recusal would not be required because there could be no reasonable question concerning impartiality, I would feel more comfortable not hearing the case.

21. Do you belong to any organizations that discriminate based on race, religion, or gender? No.

22. Have you met the mandatory minimum hours requirement for continuing legal education courses?

I have in past years, and I am scheduled to do so this year with the Judicial Conference in August and the Family Court Bench/Bar CLE in December.

23. What do you feel is the appropriate demeanor for a judge?

A judge should strive to be even-tempered, impartial, and fair. A judge should be compassionate and always open to learning something new. At the same time, a judge should display the requisite degree of firmness to maintain control of the courtroom and should require those in the courtroom to conduct themselves in a manner consistent with respect for the judicial system.

While humor is not often an issue in the courtroom, there are times when a judge should display an appropriate sense of humor. Due to the nature of the position, a sense of humor and the ability to find and appreciate humor, including the ability to laugh at oneself, becomes more important, especially outside the courtroom and in personal life.

24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

Basically, they apply both on and off the bench, and a judge should strive at all times to be a credit to the judiciary. However, judges are human and should be able to relax, be humorous, and show a full range of emotions with friends and family.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

Reacting in anger is not appropriate, but firmness to a degree that corrects behavior in the courtroom is often necessary.

26. How much money have you spent on your campaign? If it is over $100, has that amount been reported to the House and Senate Ethics Committees?

Thus far, I have incurred the costs of paper, ink, copies, fax, and some postage; less than $50.00.

27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign?

No, and I have not used my physical offices or my work lap top.

28. Have you sought or received the pledge of any legislator prior to this date? No.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.

30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No. No.

31. Have you contacted any members of the Judicial Merit Selection Commission? No.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted? Yes.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Deborah Neese

Sworn to before me this 2 day of August, 2012.

Notary Public for South Carolina

My commission expires: 03/18/18

State of South Carolina
The Family Court of the Ninth Judicial Circuit

PAUL W. GARFINKEL
JUDGE

100 BROAD STREET
SUITE 248
CHARLESTON, SOUTH CAROLINA 29402-0934
TELEPHONE: (843) 958-4417
FAX: (843) 958-4433
E-MAIL: pgarfinkelj@sccourts.org

MERRILYN O. JOHNSON PhD. JD.
Administrative Assistant

Jane O. Shuler, Esq.
Chief Counsel
Judicial Merit Selection Committee
P.O. Box 142
Columbia, SC 29202

October 1, 2012

RE: Update of PDQ

Dear Ms. Shuler,

I am enclosing herewith the following which will update the information on my Personal Data Questionaire:

1) Copy of Order of Court of Appeals
2) Copy of attached Letter to Counsel
3) Copy of letter to me (and to Defendant), from State appointed attorney
4) Copy of Return to Motion filed by attorney
5) Brief of attorney representing me at the Court of Appeals

This is in reference to the answer to question 34. In reviewing my copy of the PDQ I retained, I do not see where I referenced this out in my original answer. I do not know if the submitted PDQ made mention of this or not. If not, please accept my apology. The enclosed hopefully will give you the information you need for the PDQ. If not, please advise and I will be glad to supply you with any additional information needed.

Yours very truly,

Paul W. Garfinkel

The South Carolina Court of Appeals

Harold Simmons, Jr., Appellant,

v.

Charleston County Family Court, Paul W. Garfinkel and South Carolina Department of Social Services, Pamela Brown, Respondents.

Appellate Case No. 2011-186587

ORDER

This appeal was dismissed due to Appellant's failure to serve and file a complete Record on Appeal. Appellant has filed a petition to reinstate, claiming the omission of certain documents designated by Respondents was inadvertent. Appellant has filed an amended Record on Appeal. After careful consideration of the parties' filings, Appellant's motion is granted and this appeal is reinstated.

FOR THE COURT

Columbia, South Carolina

FILED
9/12/12

cc:
Harold Simmons, Jr.
James A. Stuckey, Jr.
Julie J. Armstrong

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 12, 2012

Harold Simmons, Jr.
1182 King St.
Charleston SC 29403

Mr. James A. Stuckey, Jr.
123 Meeting Street
Charleston SC 29401

Re: Simmons, Harold v. Charleston County
Appellate Case No. 2011-186587

Dear Counsel:

Enclosed is an order of the Court regarding your petition.

Appellant's final briefs, respondents' final briefs, and fourteen (14) copies of the record on appeal must be served and filed no more than twenty days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

STUCKEY LAW OFFICES, LLC

ATTORNEYS AT LAW
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CYNTHIA W. DILLARD, SENIOR PARALEGAL
SANDRA S. GARVIN, OFFICE MANAGER

September 27, 2012

The Honorable Paul W. Garfinkel
Judge, The Family Court
248 Judicial Center
100 Broad St. **PERSONAL, PLEASE**
Charleston, SC 29401

Pamela D. Brown, Esquire
Vice President, Trident Technical College
7000 Rivers Ave. **PERSONAL, PLEASE**
Charleston, SC 29423-8067

RE: Harold Simmons, Jr. vs. Charleston County Family Court, Paul W. Garfinkel, and South Carolina Department of Social Services, Pamela Brown
Court of Common Pleas, Charleston County
Appeal to the S.C. Court of Appeals

Dear Paul and Pam:

Back on December 26, 2010, Judge Roger Young granted you summary judgment in this case. Since then I have been butting heads with Simmons, and his unknown shadow legal counsel, to get his appeal to the Court of Appeals dismissed for failure to comply with the appellate rules. On June 22, 2011, we advised the Court of Appeals:

> On June 5, 2011, appellant Simmons requested an extension of 30 days to prepare his brief. (Attachment 1) The stated reason for this was "computer crash, virus. I need to gather raw materials to prepare brief." On June 13, 2011, you advised Mr. Simmons that the Court had not received his initial brief. (Attachment 2) We have been advised by court reporter Amanda K. Haffenden that the transcript of the hearing before Judge Young was delivered on May 3, 2011. Clearly Rule 208(a)(1), SCACR, provides that the Brief of Appellant should be served and filed thirty (30) days after the transcript is received. We have not been served a copy of the Brief of Appellant.

> "Absolute immunity is designed to free the *judicial process* from the harassment and intimidation associated with litigation." *Burns v. Reed*, 500 U.S. 478, 494 (1991), (Emphasis in original), citing *Forrester v. White*, 484 U.S. at 226 (1988). "Judicial immunity is an absolute
> bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances." *O'Laughlin v. Windham*, 330 S.C. 379, 385, 498 S.E.2d 689, 692 (S.C. App. 1998).
>
> Respondents strongly oppose any extension of time being granted to appellant to serve and file his Brief of Appellant and urge that his appeal be dismissed as violative of Rule 208(a)(1), SCACR.

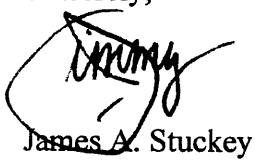
Since then we have filed four or five other motions to dismiss Simmons' appeal. One was granted, and the Court threw out his appeal, but then he filed for reinstatement, and the Court put him back on the docket.(?!)

Now the latest Order from the Court, speaking through Associate Justice Cureton, directed that we serve and file our BRIEF OF RESPONDENTS, so I am enclosing herewith a copy of it for both of you.

So we are all now moving forward with vigor, however, I'm confident that in the final analysis the Court will decide this case without oral argument, will issue an unpublished opinion affirming it, and this exercise in futility, for all of us, will finally be brought to an end.

Kindest regards.

Sincerely,



James A. Stuckey
Direct E-mail: jstuckey@stuckeylaw.com

ssg

Enclosures

cc: Ms. Nancy Stevenson (IRF Claim Nos. 58765 and 58766) **Via Email only**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-4264

Harold Simmons, Jr., ... Appellant,

v.

Charleston Family Court, Paul W. Garfinkel and
South Carolina Department of Social Services,
Pamela Brown, ... Respondents.

RETURN TO MOTION TO REINSTATE

JAMES A. STUCKEY, JR.
ALISSA R. COLLINS
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401
(843) 577-9323

Attorneys for Respondents

STATEMENT OF ISSUE

By Order filed May 4, 2012, this Court granted Respondents' motion to dismiss Appellant's appeal on the grounds that he had failed to comply with the South Carolina Rules of Appellate Procedure, Rule 260(a), as asserted by Appellant repeatedly disregarding this Court's orders and the South Carolina Rules of Appellate Procedure. Appellant has now filed a Motion to Reinstate. Respondents object to the requested reinstatement.

PROCEDURAL BACKGROUND OF CASE

Pro se Appellant commenced this *pro se* action against Family Court Judge Paul W. Garfinkel and Department of Social Services attorney Pamela Brown for false imprisonment after he was incarcerated by Judge Garfinkel for failure to pay Court ordered child support. Respondent Brown represented DSS and was the prosecuting attorney in the case. Appellant did not appeal from that case, but on July 10, 2009, filed this action in the Court of Common Pleas for Charleston County for damages.

On December 26, 2010, the Honorable Roger M. Young granted summary judgment to the Respondents on the grounds of absolute judicial immunity and absolute prosecutorial immunity "since the evidence before the Court is uncontradicted and there is no genuine issue as to any material fact." (Order of Judge Young) Respondents' motion was supported by the Affidavits of Judge Garfinkel and attorney Brown.

Appellant served his Notice of Appeal on February 25, 2011, and this appeal followed. However, by Order of Dismissal filed March 30, 2011, this Court dismissed Appellant's appeal due "to the failure of appellant to provide proof of ordering the transcript and/or failure to serve

and file the Appellant's Initial Brief and Designation of Matter." (Order of Dismissal, Exhibit A)

On June 5, 2011, Appellant requested an extension of thirty days to prepare his brief. On June 13, 2011, this Court advised Appellant that the Court had not received his Initial Brief. By letter from their counsel Respondents opposed any extension of time, but Appellant was granted an extension of time in which to file his brief.

On September 13, 2011, Respondents filed their MOTION TO DISMISS asserting:

> Respondents move to dismiss this appeal by *pro se* appellant on the ground that he has violated and failed to comply with Rule 210(c), SCACR, by failing to include any of respondents' Designation of Matter in the purported RECORD ON APPEAL as required.
>
> * * * *
>
> Also, the purported RECORD ON APPEAL now served and filed by appellant is woefully deficient, does not comply with Rule 209(c), SCACR, ignores respondents' Designation of Matter, and does not form any basis for this Court to decide the issues presented and issue an opinion.

By Order filed October 17, 2011, the Honorable Jasper M. Cureton, Associate Justice, ordered:

> Respondents have filed a motion to dismiss this appeal due to Appellant's failure to include any of Respondents' designations of matter in the Record on Appeal. Within twenty days, Appellant shall serve and file an Amended Record on Appeal that includes all matter designated by Respondents. Upon receipt, or within twenty days, this Court will consider the motion to dismiss.

(Order, Judge Cureton, Exhibit B)

By letter of V. Claire Allen, deputy clerk, on October 17, 2011, appellant was advised that he must serve and file an Amended Record on Appeal within twenty (20) days, being November 7, 2011. (Exhibit C)

On November 4, 2011, Appellant mailed copies of certain documents to Respondents' counsel, apparently in attempted compliance with Judge Cureton's Order, but the purported Amended Record on Appeal did not include "all matter designated by Respondents" in their DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL in that:

a. **Requests to Admit to Plaintiff** was not included. Instead, under heading "Request to Admit to Plaintiff" appellant enclosed copies of a Motion to Compel, Interrogatories to Plaintiff, and Request to Produce to Plaintiff with a copy of the letter of respondents' counsel to the clerk of court dated March 8, 2010, a Motion and Order Coversheet, and a copy of attorney William Thrower's letter to him of January 11, 2009.

b. **Motion for Non-Response to Request for Admissions** was not included. Instead, appellant included copies of Plaintiff's Response to Defendants' Interrogatories, Interrogatories to Plaintiff, a copy of counsel's letter to him of June 23, 2011, and a copy of appellant's letter to counsel of December 9, 2010, stating "Find enclosed for service upon you Plaintiff's Response to Defendants' Interrogatories."

Respondents' counsel asserted that their motion to dismiss should be granted and Appellant's appeal should be dismissed. (Affidavit of Attorney Stuckey, Exhibit D)

On January 12, 2012, this Court issued another Order ordering:

> However, within twenty days Appellant shall comply with Rule 210 of the South Carolina Appellate Court Rules. Specifically, Appellant shall compile an Amended Record on Appeal containing all matters designated by Respondents to be included in the Record on Appeal, including the correct documents for Respondents' designated matters titled "Requests to Admit to Plaintiff" and "Motion for Non-Response to Request for Admissions." Appellant shall serve one copy of the Amended Record on Appeal on Respondents. Additionally, Appellant shall file with the clerk of this Court fourteen bound copies of the Amended Record on Appeal and one unbound copy of the Amended Record on Appeal.

(Order, Judge Lockemy, filed January 12, 2012, Exhibit E) (emphasis in original).

On March 22, 2012, Appellant served a single copy of a purported RECORD ON APPEAL on

Respondents' attorneys. Supposedly the requisite number of required copies were filed with the Court. The copy of the RECORD ON APPEAL served on Respondents was deficient, and both failed to comply with Rule 210(c), SCACR, and the two previous Orders of the Court in these respects:

> 1. The Affidavit of Pamela D. Brown for summary judgment is not included in its entirety. Only the last signature page is included.
>
> 2. The Affidavit of Paul W. Garfinkel for summary judgment is omitted in its entirety. Only the Judge's signature and a notarization, with nothing else, is included.
>
> 3. Defendants' Memorandum for Summary Judgment is not included in its entirety.
>
> 4. The Transcript of Record, pages 45-58, is not complete and does not contain the entire transcript.

(Motion to Dismiss Appeal)

On May 4, 2012, this Court filed its Order stating, "After careful consideration, Respondents' motion to dismiss is granted. *See* Rule 260(a), SCACR (providing that this Court may dismiss an appeal whenever it appears an appellant has failed to comply with the South Carolina Rules of Appellate Procedure)."

Appellant has now moved to reinstate his appeal on the grounds that the Record on Appeal, while deficient, was handed over to a Fedex office and was not fully copied.

Appellant's Motion to Reinstate his appeal should be summarily denied because Appellant has repeatedly failed to comply with the Appellate Court Rules as evidenced by the facts above. Appellant's purported appeal has been a litany of Appellant's delay and failure to comply with both the Appellate Court Rules and the Orders of this Court. The fault and blame for not complying with the applicable rules and the Orders of this Court is on Appellant, not

Fedex. Appellant is the person charged with preparing and assembling a proper RECORD ON APPEAL. Appellant is the one who signs the Certificate of Counsel certifying "that the Record on Appeal contains all material proposed to the included by any of the parties and not any other material." Rule 210(g), SCACR. Appellant, not any representative of Fedex, is the one who signed this certification on two occasions, both of which were incorrect.

A second, and perhaps more compelling, reason to deny Appellant's MOTION TO REINSTATE is that Appellant is attempting to assert and appeal issues from his previous contempt of court hearing from which no appeal was taken, and which are not before the Court in this present appeal.

A brief review of the Briefs before the Court and the purported RECORD ON APPEAL will show that this is true, and that granting Appellant's MOTION TO REINSTATE and reviving this frivolous appeal will be a needless expenditure of judicial resources and time.

In their INITIAL BRIEF OF RESPONDENTS Judge Garfinkel and attorney Brown stated the two issues on appeal:

STATEMENT OF THE ISSUES ON APPEAL

1. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT JUDGE PAUL W. GARFINKEL.

2. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE PROSECUTORIAL/QUASI JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT DSS ATTORNEY PAMELA BROWN.

These issues on appeal are supported by Respondents' Designation of Matter and the RECORD ON APPEAL to be assembled by Appellant.

In opposition to the above issues of absolute judicial immunity and prosecutorial/quasi judicial immunity Appellant has stated in his FINAL BRIEF the issues on appeal to be:

Arguments

I. BECAUSE ONE FAMILY COURT JUDGE CANNOT IGNORE THE ORDER OF ANOTHER FAMILY COURT JUDGE, THE COURT ERRED IN ITS DECISION TO GRANT THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

II. BECAUSE A PERSON HAS THE RIGHT TO BE CLEARLY INFORMED OF THE NATURE AND CAUSE OF THE CHARGE AGAINST HIM, THE COURT ERRED IN ITS DECISION TO GRANT THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

III. BECAUSE A COURT MAY ALSO ABUSE ITS DESCRETION WHEN THE RECORD CONTAINS NO EVIDENCE TO SUPPORT ITS DECISION, THE COURT ERRED IN ITS DECISION TO GRANT THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

IV. BECAUSE A PERSON SHALL NOT BE IMPRISONED FOR A DEBT EXCEPT IN THE CASE OF FRAUD, THE COURT ERRED IN ITS DECISION TO GRANT THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

V. BECAUSE A DEFENDANT MUST RECEIVE CREDIT AGAINST HIS OR HER JAIL TERM, THE COURT ERRED IN ITS DECISION TO GRANT THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

(Final Brief of Appellant, p. I.)

None of the above five issues are supported by the purported RECORD ON APPEAL to be submitted by Appellant, are not mentioned in the Order of Judge Young appealed from, and are not before the Court.

CONCLUSION

The two Respondents in this case, Family Court Judge Paul W. Garfinkel and S.C. Department of Social Services staff attorney Pamela Brown, are supposedly immunized from

actions such as asserted herein by the established longstanding doctrines of both judicial and prosecutorial immunity. However, despite those immunities and summary judgment granted to them, Appellant continues to pursue this frivolous case and appeal and continually harass them by wilfully failing to comply with both the Appellate Court Rules and the Orders of this Court.

Appellant's motion to reinstate should be denied because his appeal was dismissed for repeated failure to comply with the Orders of this Court and the Appellate Court Rules, after granting he was granted extensive leeway and opportunities to comply and remedy his omissions. Additionally, Appellant's entire appeal is frivolous because it does not assert or address any proper issues on appeal before this Court. If the Court somehow determines to give Appellant a third or fourth bite at the judicial apple and reinstate his *pro se* appeal this case will ultimately then be decided for Respondents, without oral argument, and in an unreported case of no precedential value. It would be unfortunate to expend additional time and judicial resources to award Appellant for his derelictions.

Accordingly, Appellant's MOTION TO REINSTATE should be denied.

Respectfully submitted,

JAMES A. STUCKEY, JR.
ALISSA R. COLLINS
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401
(843) 577-9323

Attorneys for Respondents

May 24, 2012

Charleston, South Carolina

STUCKEY LAW OFFICES, LLC

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CYNTHIA W. DILLARD, SENIOR PARALEGAL
SANDRA S. GARVIN, OFFICE MANAGER

September 27, 2012

The Honorable V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Simmons, Harold vs. Charleston County
Case # 2011186587

Dear Clerk of Court Allen:

Please find enclosed the original and fifteen (15) copies of our BRIEF OF RESPONDENTS and Certificate of Service of Sandra S. Garvin proving service of a copy of the Brief on Appellant Harold Simmons, Jr. today. Please return a file-stamped copy of this letter to me in the stamped self-addressed envelope enclosed for your convenience.

Kindest regards.

Respectfully,

James A. Stuckey
Direct E-mail: jstuckey@stuckeylaw.com

ssg

Enclosures

cc: The Honorable Paul W. Garfinkel
Ms. Pamela Brown
Ms. Nancy Stevenson (IRF Claim Nos. 58765 and 58766)
(with Enclosures)

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CYNTHIA W. DILLARD, SENIOR PARALEGAL
SANDRA S. GARVIN, OFFICE MANAGER

September 27, 2012

Mr. Harold Simmons, Jr.
1182 King St.
Charleston, SC 29403

RE: Harold Simmons, Jr. vs. Charleston County Family Court, Paul W. Garfinkel, and South Carolina Department of Social Services, Pamela Brown
Appeal to S.C. Court of Appeals
Civil Action No. 2009-CP-10-4264

Dear Mr. Simmons:

I serve on you herewith a copy of the BRIEF OF RESPONDENTS, Certificate of Counsel, and the Certificate of Service of Sandra S. Garvin proving service on you today.

Sincerely,

James A. Stuckey

ssg

Enclosures

cc: The Honorable Paul W. Garfinkel
Pamela D. Brown, Esquire
Ms. Nancy Stevenson (IRF Claim Nos. 58765 and 58766)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-4264

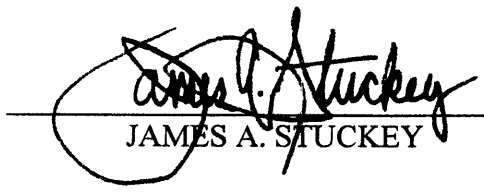
Harold Simmons, Jr., ... Appellant,

v.

Charleston Family Court, Paul W. Garfinkel and
South Carolina Department of Social Services,
Pamela Brown, ... Respondents.

CERTIFICATE OF COUNSEL

I CERTIFY that this Brief of Respondents complies with Rule 211(b), SCACR.



JAMES A. STUCKEY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-4264

Harold Simmons, Jr., ... Appellant,

v.

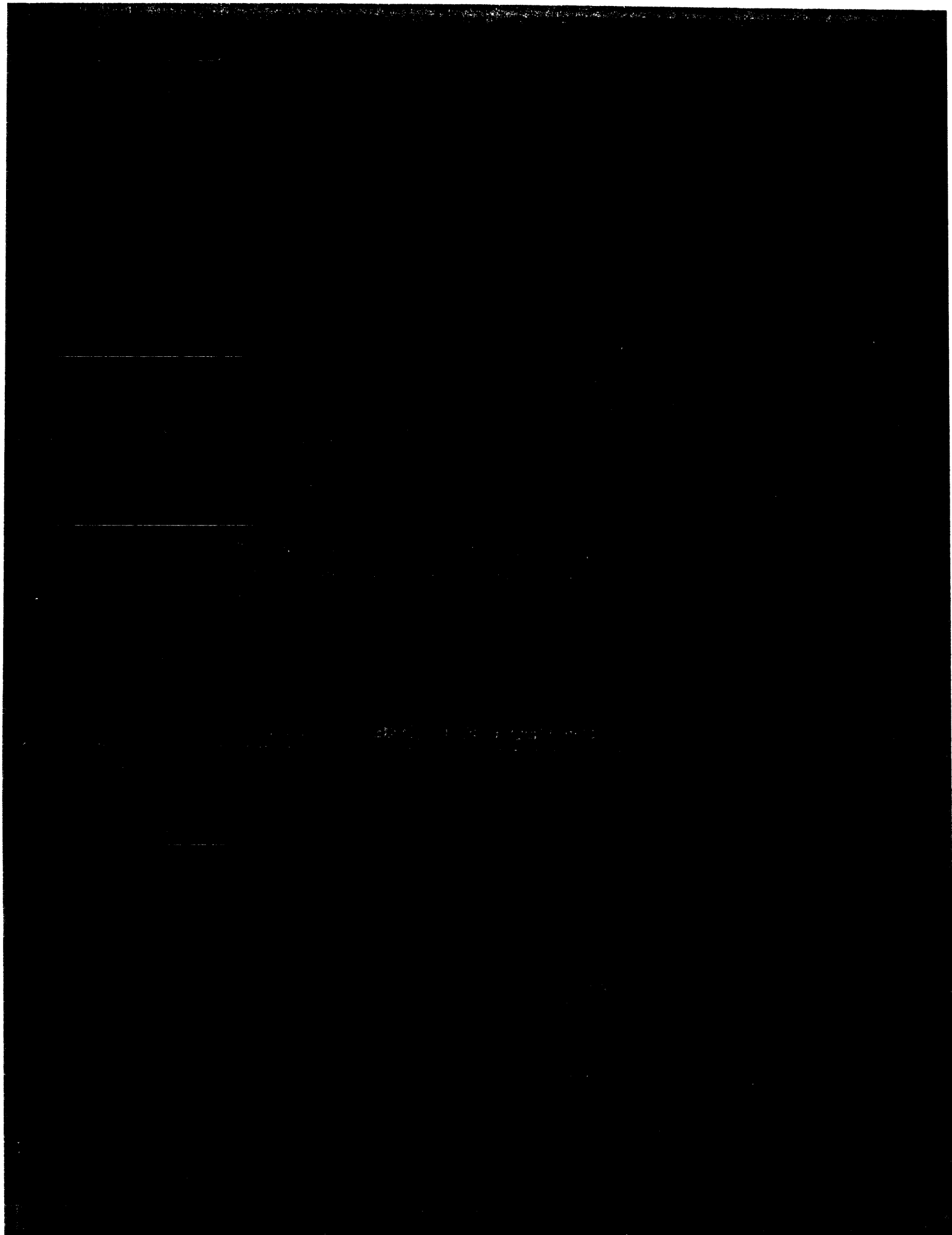
Charleston Family Court, Paul W. Garfinkel and
South Carolina Department of Social Services,
Pamela Brown, ... Respondents.

PROOF OF SERVICE

I CERTIFY that I have served the Brief of Respondents on *pro se* Appellant Harold Simmons, Jr. by delivering a copy via U.S. Mail First-Class postage prepaid on the 27th day of September 27, 2012, addressed as follows:

Mr. Harold Simmons, Jr.
1182 King St.
Charleston, SC 29403

Sandra S. Garvin
SANDRA S. GARVIN



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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT JUDGE PAUL W. GARFINKEL.

2. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE PROSECUTORIAL/QUASI JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT DSS ATTORNEY PAMELA BROWN.

STATEMENT OF THE CASE

Appellant Harold Simmons, Jr. commenced this *pro se* action against Family Court Judge Paul W. Garfinkel and Department of Social Services attorney Pamela Brown on July 10, 2009, for false imprisonment alleging, "On August 16, 2006 Harold Simmons Jr. Was wrong imprisons by Charleston County Judge Paul Garfinkel and South Carolina Department of Social Services Attorney Pam Brown." All of Judge Garfinkel's dealings with appellant were as the presiding judge over his cases for failure to pay court-ordered child support. Respondent Brown was the prosecuting attorney and represented DSS. Appellant complains that he was ordered to jail after being found in contempt of court for his failure to pay his child support.

The respondents pleaded the defenses of judicial immunity, the statute of limitations of S.C. Code Ann. § 15-78-110, and "judicial, or quasi-judicial" immunity under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-60.

Respondents moved for summary judgment, supported by the affidavits of Judge Garfinkel and attorney Brown. Appellant did not present any timely contesting affidavits or evidence. Respondents' motion came before the Honorable Roger M. Young, presiding judge of the Ninth Judicial Circuit, on December 10, 2010. After hearing the presentations of the parties Judge Young ruled that the respondents were entitled to judicial and prosecutorial/quasi-judicial immunity, granted summary judgment, and dismissed this action.

Appellant served his Notice of Appeal on February 25, 2011, and this appeal followed.

ARGUMENTS

1. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT JUDGE PAUL W. GARFINKEL.

Respondent Paul W. Garfinkel is a Family Court Judge of the Ninth Judicial Circuit. All of his dealings and contact with appellant, which precipitated this action, were through his position as presiding judge in the Family Court of Charleston County in his judicial position dealing with delinquent child support cases. In that capacity, he had jurisdiction of the cases and appellant under S.C. Code Ann. § 63-3-530, Jurisdiction in Domestic Matters. Judge Garfinkel avers that appellant was not falsely imprisoned. (R. pp. 28-31).

In his Amended Answer Judge Garfinkel pleaded the affirmative defense of judicial immunity. (R. p. 14). Judicial immunity is one of the basic common law tenets upon which our modern system of justice is built. At common law, since at least 1772, "Neither party, witness, counsel, jury or Judge can be put to answer, civilly or criminally, for words spoken in office." *King v. Skinner*, Lofft 55, 56, 98 Eng. Rep. 529, 530 (K.B. 1772), quoted in *Burns v. Reed*, 500 U.S. 478, 490 (1991).

Judicial immunity is not a defense, it is a complete immunity to being sued. Its existence is a legal issue. "Judicial immunity affords absolute immunity from suit." *Stump v. Sparkman*, 435 U.S. 349 (1978). "Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances." *O'Laughlin v. Windham*, 330 S.C. 379, 385, 498 S.E. 2d 689, 692 (1998). "Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." *McEachern v. Black*, 329 S.C. 642, 647, 496

S.E. 2d 659 (1998).

Judicial immunity is an absolute and complete bar to legal actions against judges except in three exceptions. First, no judicial immunity exists if a judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman,* 435 U.S. 349, 357 (1978). Secondly, judicial immunity extends only to judicial acts. *Forrester v. White*, 484 U.S. 219 (1988). The third limitation, which is of no concern in our present case, states judges cannot claim judicial immunity for suits seeking only prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, FN 2 (1984).

South Carolina is in accord with this. "[J]udges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only." *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 541 (2002) (internal citations omitted).

As to the acts of which appellant complains, Judge Garfinkel had jurisdiction of both the case and party. He was performing a judicial act. Appellant is not seeking any prospective injunctive relief. Accordingly, respondent Judge Paul W. Garfinkel is entitled to absolute judicial immunity and the trial court's grant of summary judgment to him should be affirmed.

2. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE PROSECUTORIAL/QUASI JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT DSS ATTORNEY PAMELA BROWN.

At all times alleged in appellant's Complaint respondent Pamela Brown was a staff attorney with the S.C. Department of Social Services in the Charleston County offices. In all of her dealings and contacts with appellant she was prosecuting and handling delinquent child

support cases filed against him in the Charleston County Family Court which were assigned to her. All of the proceedings were in open court, judicial, procedurally proper, and intimately associated with the judicial phase of the Family Court processes. Attorney Brown avers that appellant was not falsely imprisoned. (R. pp. 25-26).

In her Amended Answer respondent Pamela Brown pleads the defense of prosecutorial and quasi-judicial immunity. (R. pp. 25-26).

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et. seq.*, provides, "The governmental entity is not liable for a loss resulting from: (1) legislative, judicial, or quasi-judicial action or inaction." S.C. Code Ann. § 15-78-60(1).

Absolute prosecutorial immunity "is not grounded in any special 'esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself.'" *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997)(quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)). Prosecutors are entitled to absolute immunity from civil liability for conduct "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman,* 424 U.S. 409, 430 (1976). Absolute immunity is afforded prosecutors when acting "within the advocate's role." *Buckley v. Fitzsimmons*, 509 U.S. 259, 278 (1993).

"[T]he immunity which is extended to the judges is in like manner extended to the attorneys in the presentation of the client's case to the court or the jury." *Yaselli v. Goff*, 275 U.S. 503, 72 L.Ed. 395, 402 (1927), cited in *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496, 501 (S.C. App. 2001).

> The duties of a prosecutor fall into the exceptions enumerated by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) and § 15-78-60. The case law cited throughout this opinion clearly supports the proposition that a prosecutor's typical duties are "judicial" or "quasi-judicial" in nature. Accordingly, this Court finds a prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving "judicial" or "quasi-judicial" acts, provided a defendant prosecutor raises the affirmative defense of sovereign immunity in his return. *See Tanner v. Florence City-County Bldg. Comm'n*, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999) (holding sovereign immunity is an affirmative defense that must be pled).

Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496, 508 (S.C. App. 2001).

Accordingly, for the reasons stated, based on applicable law, respondent Pamela Brown, acting in her capacity as a prosecuting attorney, is entitled to absolute prosecutorial/quasi judicial immunity, and the grant of summary judgment for her should be affirmed.

ADDITIONAL SUSTAINING GROUND

1. THIS ACTION WAS NOT TIMELY BROUGHT NOR FILED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS PERIOD OF S.C. Code Ann. § 15-78-110, SOUTH CAROLINA TORT CLAIMS ACT, AND IS THUS TIME BARRED BY THAT PROVISION.

Appellant alleges in his Complaint filed July 10, 2009:

> Client Stated on May 8, 2006 he was arrested on a family court warrant on a rule to show cause. And on May 11, 2006 he was brought before Charleston County Judge Segars Andrews and South Carolina Department Of Social Services Attorney Pam Brown with also his workman Comp attorney Thomas White of Steinberg law frm. Who argue reasons why his client Harold Simmons Jr. should not be charged with contempt and to be release from jail. On May 11, 2006 Harold Simmons was released and was told to come back to court on August 16, 2006 for a review just to give a workman comp update report. On August 16, 2006 Harold Simmons Jr. Was wrongful imprisons by Charleston County Judge Paul Garfinkel and South Carolina Department of Social Services Attorney Pam Brown. This comes under the legal term "wrong", because of this Harold Simmons file this as follow:
>
> * * * *

False Imprisonment Dates from-
August 16, 2006 through out October 20, 2006 to February 16, 2007

(R. pp. 6-7).

As emphasized above all of the acts of which appellant complains in this action, including "False Imprisonment Dates from- August 16, 2006 through out October 20, 2006 to February 16, 2007," occurred during the years 2006 and 2007, and ended on February 16, 2007.

Appellant did not file this action until July 10, 2009, more than two years after the last complained of event. The statute of limitations provision of the S.C. Tort Claims Act provides:

> **§ 15-78-110. Statute of limitations.**
>
> Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

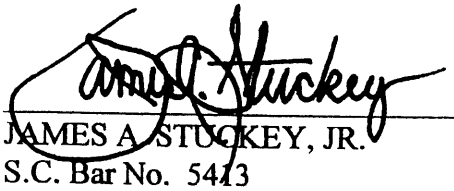
Accordingly, since the last act of which appellant complains occurred on February 16, 2007, and this action was not filed until July 10, 2009, more than two years after the complained of event, this case is additionally barred by the SCTCA statute of limitations provision set forth in S.C. Code Ann. § 15-78-110.

CONCLUSION

Based on the submitted Affidavits of respondents Judge Paul W. Garfinkel and DSS attorney Pamela Brown, which were uncontradicted by appellant by either affidavits or evidence, and for the reasons stated, in accordance with applicable law and precedent, the summary judgments granted by The Honorable Roger M. Young should be affirmed, and this appeal of the

pro se appellant should be dismissed.

Respectfully submitted,



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September 27, 2012

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