

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
2019-CP-25-00111

RENEE S. BEACH, as Personal  
Representative of the Estate of MALLORY  
BEACH,

Plaintiff,

v.

GREGORY M. PARKER, INC. d/b/a  
PARKER'S CORPORATION, RICHARD  
ALEXANDER MURDAUGH, RICHARD  
ALEXANDER MURDAUGH, JR., JOHN  
MARVIN MURDAUGH, as P.R. of the Estate  
of MARGARET KENNEDY  
BRANSTETTER MURDAUGH, and  
RANDOLPH MURDAUGH, IV, as P.R. of the  
Estate of PAUL TERRY MURDAUGH,

Defendants.

**DEFENDANT GREGORY M. PARKER,  
INC.'S MOTION TO DISQUALIFY**

Defendant Gregory M. Parker, Inc. d/b/a Parker's Corporation ("Parker's") moves this Court to disqualify Plaintiff's counsel, Mark Tinsley and Tabor Vaux. Tinsley should be disqualified based on (1) his improper receipt and review of Parker's privileged documents; (2) his improper disclosure of privileged information and materials; and (3) his improper communications with a represented person in a related lawsuit. Further, Vaux should be disqualified based on his improper receipt and review of Parker's privileged information.

As Plaintiff's counsel, Tinsley has turned this lawsuit into a multi-front war against Parker's. His campaign includes a parallel lawsuit about the alleged disclosure of materials related to this lawsuit. There, Tinsley issued subpoenas plainly intended to obtain confidential and privileged information about Parker's strategy in *this* lawsuit, using an action in one theater of the conflict to benefit another. When presented with normal procedural challenges to that objective—like proper

privilege objections asserted by counsel—Tinsley declined to let the process simply play out. Instead, he and Vaux chose to charge ahead with reviewing privileged documents that they knew they should not have possessed, going so far as to flaunt their improper review of those documents under the guise of trying to “help” Judge Bentley Price in evaluating Parker’s privilege assertions. Further, rather than communicate normally with counsel for Sara Capelli (a target of Tinsley’s subpoenas whom Tinsley knew to be represented), Tinsley contacted Capelli directly, induced her to fire her counsel, and pressured her to provide information about Parker’s regardless of Capelli’s stated concerns about her professional reputation.

In short, Tinsley and Vaux have repeatedly ignored their ethical obligations in the interest of gathering whatever ammunition they can fire at Parker’s. This Court should not stand for it, and their actions have tainted the fairness of these proceedings such that they can no longer properly serve as Plaintiff’s counsel. Parker’s previewed this motion at an earlier hearing, *before* Judge Price made findings regarding Parker’s privilege claims. On May 24, Judge Price issued an order confirming that Tinsley and Vaux had, in fact, obtained and examined Parker’s privileged information. Based on that confirmation, this Court should (1) disqualify Tinsley and Vaux; (2) require Plaintiff to return or destroy any of Parker’s privileged documents in her or her current counsel’s possession; and (3) bar Plaintiff from using any information she may retain from her counsel’s improper acquisition and review of Parker’s privileged information.

## **BACKGROUND**

### ***Multiple lawsuits follow the death of Mallory Beach.***

This case arises out of a February 2019 boat crash, in which a drunk Paul Murdaugh crashed a boat into a bridge, causing the death of Mallory Beach. Plaintiff Renee Beach, Mallory’s mother, sued multiple defendants for her daughter’s death, including Parker’s and several members of the

Murdaugh family. The parties unsuccessfully attempted to mediate this dispute in September of 2020. As part of that mediation, Plaintiff prepared a video (“the Mediation Video”), produced in an effort to paint Parker’s in the worst light possible.

To say the least, the legal saga of the Murdaugh family—both in this lawsuit and in Alex Murdaugh’s trial for the murders of his wife and son (codefendants Margaret Murdaugh and Paul Murdaugh)—has attracted intense national and international media attention, including from news outlets and documentarians. One of these documentarians is Vicky Ward, a nationally-known reporter who was working on a documentary for Investigation Discovery about the murders of Margaret and Paul Murdaugh. On November 24, 2021, Ward published a trailer for her documentary.

Six days later, Plaintiff moved this Court for a Rule to Show Cause, arguing that Parker’s and its representatives had violated the confidentiality requirements surrounding mediation by allegedly providing the Mediation Video and photographs of Mallory Beach’s body to Ward for use in her documentary’s trailer. Those allegations were—and remain—based solely on claims by Plaintiff’s counsel, Mark Tinsley. Parker’s responded to the motion, and, at Parker’s request, a hearing was set in December 2021. Before that hearing could happen, Plaintiff withdrew her motion.

After withdrawing her motion in this action, Plaintiff and others filed a separate lawsuit against Parker’s, several Parker’s-affiliated individuals, one of Parker’s attorneys, Ward, and others, alleging outrage and civil conspiracy based on Ward’s trailer. *See generally Renee S. Beach, et al. v. Gregory M. Parker, et al.*, Hampton County Ct. of Common Pleas C/A No. 2021-CP-25-00392 (“the Conspiracy Lawsuit”). Mark Tinsley also represents the plaintiffs in the Conspiracy Lawsuit.

***Tinsley and Vaux obtain and review Parker’s privileged documents.***

In February 2022, Plaintiff served subpoenas in the Conspiracy Lawsuit (without providing notice to Parker’s or any other defendant) to obtain documents from a third-party public relations firm

and a private investigator hired by Parker's to provide advice relating to Parker's response to this case and in potential future litigation. Specifically, Plaintiff subpoenaed (1) Inquiry Agency, LLC, and Sara Capelli (collectively, "Inquiry Agency"), and (2) the Laurens Group, Push Digital, LLC, and Wesley Donehue (collectively, "Laurens Group"). These subpoenas each sought privileged documents concerning Parker's strategy in responding to this action, as well as the thoughts and impressions of Parker's counsel. Further, at the time of the subpoenas, Parker's had not been served in the Conspiracy Lawsuit, and no Parker's-affiliated defendant was copied on the subpoenas.

When Parker's eventually learned of the subpoenas, it moved (in the Conspiracy Lawsuit) to quash them, asserting that most of the documents were privileged as attorney-client communications or attorney work product. Judge Price (the judge in the Conspiracy Lawsuit) initially denied Parker's motion and ordered Inquiry Agency and Laurens Group to produce the requested documents.<sup>1</sup> Parker's immediately moved for reconsideration, and, after a phone conference, Judge Price ordered all documents produced pursuant to the subpoenas to be sent to the court for *in camera* review.<sup>2</sup> The court said that after it had resolved all issues related to relevance and privilege, Parker's would have ten days to respond with objections on the record and would have an opportunity to appeal any decision as normal. [Ex. B at 2.]

After a hearing on April 29, 2022, during which the court did not indicate that it might order production of the subpoenaed documents without following the procedure laid out in its April 6, 2022 order, Judge Price's law clerk e-mailed all counsel, stating (1) that all available documents should be produced to the Conspiracy Lawsuit plaintiffs within fifteen days without a privilege log and (2) that any objections by the Parker's Defendants will be taken up before trial.<sup>3</sup> The court

---

<sup>1</sup> A copy of this March 28, 2022 order is attached as **Exhibit A**.

<sup>2</sup> A copy of this April 6, 2022 order is attached as **Exhibit B**.

<sup>3</sup> A copy of this April 29, 2022 email is attached as **Exhibit C**.

had not entered a formal order making these decisions, nor, apparently, had Judge Price made a determination as to the privileged nature of the documents.

Tinsley, however, pressed on with his efforts to obtain Parker's privileged information. Despite the lack of a proper order compelling production,<sup>4</sup> Tinsley forwarded the April 29, 2022 email from Judge Price's law clerk to Sandy Senn (counsel for Laurens Group), again without informing Parker's of this contact.<sup>[See Ex. D.<sup>5</sup>]</sup> According to Senn, Tinsley then "reached out" again about Laurens Group's documents. <sup>[See Ex. E.<sup>6</sup>]</sup> Two days later (a Sunday), Tinsley received the entirety of Laurens Group's file for Parker's. Only after this exchange, on May 6, 2022, did the court enter a final order requiring the production of documents.

Upon learning of Tinsley's improper contact and receipt of documents, Parker's filed an emergency motion to prohibit his review and dissemination of the documents Tinsley had received, which was set for a hearing on May 9, 2022. At that hearing, Tinsley informed the court that he had not only received but *reviewed* the entire Laurens Group file, comprising about 6,000 pages of privileged documents, all over the weekend and before the court could even enter its order compelling those documents production. <sup>[See Ex. J at 8:8-22.<sup>7</sup>]</sup>

As noted at the May 9 hearing, Judge Price's order regarding the subpoenas contradicted his earlier order and lacked legal support. Parker's therefore petitioned the South Carolina

---

<sup>4</sup> As Tinsley knew or should have known, the law clerk's April 29, 2022 e-mail was not, on its own, an enforceable court order. A judgment, including "a decision by the court granting other relief," becomes effective only when the judgment has been prepared, approved by the court, and "entered in the record by the clerk." See Rule 58(a)(2), SCRCR. Similarly, a party's time for appeal—like the one contemplated in Judge Price's April 6, 2022 order—only begins "after receipt of written notice *of entry of the order or judgment.*" Rule 203(b)(1), SCACR (emphasis added).

<sup>5</sup> A copy of an email from Tinsley describing these events is attached as **Exhibit D**.

<sup>6</sup> A copy of an email from Senn describing these events is attached as **Exhibit E**. When describing his actions to Parker's counsel, Tinsley failed to mention this second contact. <sup>[See Ex. D.]</sup>

<sup>7</sup> A copy of the transcript of the May 9, 2022 hearing is attached as **Exhibit F**.

Supreme Court for a writ of mandamus, seeking to compel the *in camera* review and determinations Judge Price promised in his April 6, 2022 order. On September 15, 2022, the Supreme Court held the petition in abeyance and directed Judge Price to advise the Court “whether he finally determined the evidence subpoenaed was not privileged and was, therefore, discoverable.” [See Ex. G.<sup>8</sup>] Because no request had previously been made for Parker’s to submit a privilege log, Parker’s did so the next day. On September 20, 2022, Judge Price sent a letter to the Supreme Court informing it that he had “not made a final determination as to privilege,” and that he intended “to review the privilege log [submitted by the Parker’s Defendants] and [would] make specific findings of fact.” [See Ex. H.<sup>9</sup>] On October 5, 2022, the Supreme Court granted Parker’s a writ of mandamus, ordering Judge Price to review the subpoenaed documents and Parker’s privilege log and to make specific privilege findings as to each document. This order applied to all the information Plaintiff requested, including the Inquiry Agency files along with the Laurens Group files. [See Ex. I.<sup>10</sup>]

On November 22, 2022, Judge Price conducted a telephone status conference with the parties to discuss the Supreme Court’s order.<sup>11</sup> At this conference, Tinsley admitted he had “gone through and ‘dog-eared’ documents” he received from Laurens Group, suggesting that he could “pull[ ] all those ‘dog-ears’ out, so that Defendants can tell us what those Bates-stamped versions are, so we can then hash them out.” [See Ex. J at 2.] In other words, Tinsley proposed to continue reviewing documents over which Parker’s asserted a privilege before the court could evaluate Parker’s privilege claims.

---

<sup>8</sup> A copy of the Supreme Court’s September 15, 2022 order is attached as **Exhibit G**.

<sup>9</sup> A copy of Judge Price’s letter to the Supreme Court is attached as **Exhibit H**.

<sup>10</sup> A copy of the Supreme Court’s October 5, 2022 order is attached as **Exhibit I**.

<sup>11</sup> No court reporter was present during this conference, but Parker’s filed a letter with the court afterwards summarizing the conference. That letter is attached as **Exhibit J**.

Following further discussions after the status conference, Judge Price asked for and received an updated privilege log, and he scheduled an ex parte *in camera* hearing for February 16, 2023. Counsel for Parker's was present at the hearing. Tabor Vaux appeared as counsel for the plaintiffs. Judge Price initially suggested that it would be most efficient to determine which documents the plaintiffs actually intended to use, given that they already (improperly) possessed the Laurens Group files. Vaux admitted that he had reviewed the documents, providing the court with five hard-copy compilations of the Laurens Group files that the plaintiffs in the Conspiracy Lawsuit intended to use. Judge Price excused Vaux and held the hearing with Parker's counsel. Counsel later asked Vaux for electronic copies of the five compilations he had tendered. Vaux then sent six sets of documents (not five) on February 21, 2023.

On May 24, 2023, Judge Price entered an order making the specific privilege determinations required by the Supreme Court for some of the documents possessed by Tinsley and Vaux, finding over 215 pages to be privileged. [Ex. K.<sup>12</sup>] Given that order and their admissions before Judge Price, it is undisputed both Tinsley and Vaux have received and reviewed a significant amount of Parker's privileged material.

***Tinsley improperly discloses privileged information.***

During the May 9, 2022 hearing, the Court ordered Tinsley not to disseminate any of the privileged material. [Ex. F at 11:22–25.] Despite this order, on November 30, 2022, Tinsley sent an email disclosing privileged material to Judge Price and counsel for all parties in the Conspiracy Lawsuit. This included counsel for certain private investigators who had been named as defendants

---

<sup>12</sup> A copy of Judge Price's order is attached as **Exhibit K**. Judge Price did not consider documents beyond the compilations prepared and tendered by Vaux, however. Parker's contends that hundreds more pages of the documents Tinsley and Vaux possess, and which they admit they have reviewed, are also privileged.

in that case but had no right to Parker's privileged material. Specifically, Tinsley provided screenshots of a portion of two documents which Judge Price later determined to be privileged. Further, Tinsley's e-mail included a screenshot of surveillance video taken by Inquiry Agency, over which Parker's had asserted privilege but upon which Judge Price had not yet ruled.

Similarly, on May 25, 2023, Tinsley sent an email discussing an investigatory report which Judge Price had found to be privileged the day before. Tinsley sent that e-mail to Judge Price and all counsel in the Conspiracy lawsuit, including—again—counsel for the private investigator defendants. Tinsley also sent this email discussing privileged information to John Nichols, who was not counsel of record for any party in that case and had never made an appearance.

***Tinsley converses directly with Sara Cappelli, despite knowing she was represented by counsel.***

During a hearing on March 16, 2022, Tinsley also relayed conversations he had with (1) Sandy Senn, counsel for Laurens Group,<sup>13</sup> and (2) Sara Capelli, the sole member and agent for Inquiry Agency, whom Parker's had hired. [Ex. L at 11:11–12:20.<sup>14</sup>]

Tinsley's subpoena to Inquiry Agency was apparently served soon after Tinsley signed it on January 14, 2022, and before the Conspiracy Lawsuit complaint had been served on all defendants. During a March 16, 2022 hearing in that case, Tinsley described his initial interactions with Cappelli:

Senn tells me, the person I really want, [is] the PI who was doing lots of this work – because Mr. Parker wanted three things; he wanted video of Paul Murdaugh drinking, partying, and talking about killing that girl, and I assume that's Mallory Beach, and he wanted to prove that Buster Murdaugh was gay. And so they hired Sara Capelli. . . . So we served Sara Capelli.

Almost immediately, Sara Capelli sends me a friend request on Facebook *and calls me*, and she has the most extreme case of diarrhea

---

<sup>13</sup> The details of Tinsley's communications with Wesley Donehue are currently unclear beyond Tinsley's statement that Donehue himself sent Tinsley the Laurens Group files on May 1, 2022. [See Ex. D at 1.] These communications are the subject of ongoing discovery requests by Parker's in the Conspiracy Lawsuit.

<sup>14</sup> A copy of the transcript of the March 16, 2022 hearing is attached as **Exhibit L**.

of the mouth of any person I've ever talked to. She begins to explain all the details of what Parker's was hired to do -- I mean, what Parker's hired her to do, what they hired the two PIs, Max and Henry, to do, and that their intent was to paint a picture that, because Buster Murdaugh was gay, he must have been involved in the murder of Steven Smith. And because they had this narrative that they were pushing out that the Murdaughs were terrible people, and they may very well be terrible people, but because they are terrible people, then a jury ought not find against him in the boat crash. That is what I'm told that Mr. Parker wanted the information related to Buster Murdaugh for, as well as the information related to Paul's drinking, partying, talking about killing that girl.

(Ex. L at 11:11–25, 12:1–20 (emphasis added)).

Subsequent investigation has revealed the impropriety of Tinsley's conversations with Cappelli.<sup>15</sup> To start, Tinsley apparently initiated the conversation with Capelli, not vice-versa:

**January 21, 2022:**

9:47 AM	<b>Tinsley:</b> I hope the fact that we are Facebook friends means you're gonna help me
9:53 AM	<b>Capelli:</b> May I ask who this is?
9:53 AM	<b>Tinsley:</b> Mark Tinsley
9:54 AM	<b>Capelli:</b> Well, I am certainly on the side of truth!
9:57 AM	<b>Tinsley:</b> You certainly can be
9:58 AM	<b>Capelli:</b> About board plane. Talk soon.
10:00 AM	<b>Tinsley:</b> Sounds good
10:07 AM	<b>Capelli:</b> Some light reading on plane.  <i>[Capelli sends Tinsley a PDF titled "Discoverability of Private Investigator Surveillance in South Car"]</i>
10:08 AM	<b>Tinsley:</b> Looks like you're leaning towards the wrong side now

---

<sup>15</sup> A copy of the text messages between Tinsley and Cappelli is attached as **Exhibit M**.

[Ex. M at Capelli 001074.] Although Parker's cannot currently verify whether Tinsley asked if Capelli was represented during the phone call on January 20, 2022, Tinsley's initial messages show that he never tried to find out. Further, those messages show Tinsley, from the beginning, trying to persuade Capelli to work with him, despite her adverse status regarding the subpoena.

Regardless, Tinsley was aware that Capelli was represented by counsel by at least January 31, 2022. On that date, Cheryl Shoun of Nexsen Pruet sent a letter to Tinsley informing him that Nexsen Pruet was representing Inquiry Agency, and that Inquiry Agency objected to the subpoena he issued. Tinsley and Shoun exchanged communications over the next day, leading Tinsley to re-issue subpoenas for Capelli individually and for Inquiry Agency. Shoun then sent another letter to Tinsley, objecting to the new subpoenas and reminding Tinsley of Nexsen Pruet's representation of Inquiry Agency (with Capelli as its sole member).

Despite knowing that Shoun represented Inquiry Agency and Capelli, Tinsley continued communicating directly with Capelli outside of Shoun's presence:

**February 26, 2022:**

1:06 PM	<b>Capelli:</b>	Can we talk off the record?
1:08 PM	<b>Capelli:</b>	Well come Monday I'll be pro se.
1:22 PM	<b>Tinsley:</b>	Come Monday we definitely can. I won't let Parker do anything to you.
1:24 PM	<b>Capelli:</b>	I had independent counsel and then over night they had to back out. So I had to have some type of counsel. But this is just too much for this PI. <sup>16</sup>
1:25 PM	<b>Capelli:</b>	Monday it is. What time works best for us to talk?

---

<sup>16</sup> Although Cappelli mentions losing independent counsel, she does not state that she has terminated Nexsen Pruet's representation of her.

1:42 PM **Capelli:** I am not afraid of P.G. I am afraid of how attorneys will know me and define me.

5:32 PM **Tinsley:** As soon as you fire the Parkers lawyers

5:32 PM **Tinsley:** I can't talk to you while you're represented

6:23 PM **Capelli:** Understood

[Ex. M at Capelli 001073-74.]

Tinsley's communications with Capelli continued the next day, now coaching Capelli on the best way to terminate her current counsel:

**February 27, 2022:**

5:12 PM **Tinsley:** As soon as to<sup>17</sup> tell Cheryl [Shoun] she's not representing you I am happy to come meet you. Or talk on the phone if you prefer

5:13 PM **Tinsley:** It's doesn't have to be fancy. An email to her will suffice.

5:18 PM **Capelli:** Meet me...in CHS

...

5:23 PM **Tinsley:** I tend to be direct so I'd quite Trump and just sat "sorry you're fired"

5:23 PM **Tinsley:** Quote

...

5:24 PM **Capelli:** Are you bloodying the waters.

5:24 PM **Capelli:** baiting me

5:25 PM **Capelli:** Because I've never been a paranoid PI until you.

5:25 PM **Tinsley:** Trying to get you to see the light.

---

<sup>17</sup> Based on context, "to" should presumably be "you"—i.e., "As soon as [you] tell Cheryl . . . ."

5:26 PM **Tinsley:** But I have no interest in causing you any problems

5:26 PM **Tinsley:** I'm after Parker. Wes Donahue have you up to me

5:26 PM **Mr. Tinsley:** Gave<sup>18</sup>

5:27 PM **Mr. Tinsley:** After I served him

[Ex. M at Capelli 001071-72.] Tinsley's kept talking with the represented Capelli, continuing his efforts to persuade Capelli to provide information about Parker's:

**February 27, 2022**

5:32 PM **Capelli:** Are we meeting face to face or?

5:33 PM **Tinsley:** Sure I'll meet you. Send me a copy of the email firing Cheryl and tell me where.

5:34 PM **Tinsley:** I can make tomorrow work

5:35 PM **Tinsley:** I think you know enough. Maybe more than you realize.

...

5:37 PM **Tinsley:** Let's meet. If you think you need counsel after then fine. I honestly don't think you do.

5:37 PM **Capelli:** Provided I don't get shot or hit by Bambi tonight. Let's say 2pm. Location TBD

5:38 PM **Tinsley:** Ok

[Ex. M at Capelli 001071-72.]

---

<sup>18</sup> Again showing less-than-fulsome candor, Tinsley told Judge Price at the March 16, 2022 hearing in the Conspiracy Lawsuit that Senn (counsel for Donehue) told him about Capelli, but here says that Donehue *himself* “[g]ave [Capelli] up” to him. Whether and to what extent Tinsley communicated with Donehue outside of the presence of Donehue and Laurens Group’s counsel is currently unclear.

On February 28, 2022, Capelli informed Nexsen Pruet she was terminating representation and securing separate counsel. Nexsen Pruet acknowledged the termination by email in the early afternoon. Tinsley, however, was still communicating with Capelli before that termination became effective. At 8:08 AM on February 28, Tinsley told Cappeli he was “set to come” talk to her, but he “just need[ed] the email” confirming she had terminated Nexsen Pruet. [Ex. M at Capelli 001071.] When he did not receive a response within a few hours, Tinsley reengaged:

**February 28, 2022**

10:47 AM     **Tinsley:**   Have you changed your mind?

11:02 AM     **Capelli:**   I have sent the email. And I am waiting for response.

11:08 AM     **Tinsley:**   Ok. My guess is she won’t respond. All you really needed to say was they are no longer representing you, if they ever actually were. I need to leave my office around 12 to get there by 2, so let me know. You can forward the email to me at mark@goodingandgooding.com

[Ex. M at Capelli 001071.] Capelli told Tinsley that they could not meet that day, explaining her worries about “break[ing] confidence” with her clients. [Ex. M. at Capelli 001070-71.]

Tinsley’s conversation with Cappelli continued into the evening, with Capelli specifically calling out Tinsley’s improprieties:

7:18 PM     **Capelli:**   I’m not the fall girl. I hope...lol. Your pretty crafty though.

7:19 PM     **Tinsley:**   I try to be crafty but I’m not after you

...

7:21 PM     **Capelli:**   Plus, you did communicate to me while still with counsel [bullseye emoji] [heart emoji]

7:22 PM **Capelli:** I think we have reached a truce!

7:22 PM **Tinsley:** Ha. Trust me I'm not worried about my communications

In early March 2022, Tinsley initiated contact again, leading to a string of messages where Tinsley sought specific information about Capelli's privileged and confidential work. On March 2, Tinsley sent Capelli a screenshot of an email from Judge Price's law clerk saying that motions regarding the subpoenas would be scheduled for the week of March 14, 2022. Capelli then complained to Tinsley about her unsuccessful attempts to find new counsel as well as her anxieties about being involved in this case. [Ex. M at Capelli 001067-68.] Tinsley, meanwhile, continued to coax Capelli to talk about her work for Parker's:

**March 2, 2022**

11:05 AM **Capelli:** You'll know. My role was so tiny.

11:06 AM **Tinsley:** I understand. But you know who hired you. And you know Parker hired the other PIs and I agree with you they should have their licenses yanked

11:07 AM **Capelli:** I cannot wait for this to come out. You're going to be so dissatisfied. I was.

11:09 AM **Tinsley:** Dissatisfied about what? What you videoed?

11:09 AM **Capelli:** Exactly what did I video

11:09 AM **Capelli:** Again I was disappointed

11:10 AM **Capelli:** Oh and that \$1.00 always makes me feel better when "talking" to attys

11:11 AM **Tinsley:** Well you apparently videoed something cause Parker doesn't want me to see it and you have it to SLED or Wes gave it them

[Ex. M at Capelli 001066.] After a 12-hour delay, Capelli texted Tinsley in the wee hours of the morning, again expressing her concerns about talking to him:

**March 3, 2022**

1:18 AM      **Capelli:** Please file a motion to compel before the 15th on my ass and define the discovery evidence or that is rumored to be thrown out if too broad. I need this to stop. I can't take new cases, I have no income, literally I did not sign up for this. I never even knew where Hampton was and I sure as hell did not know the Murdaugh name. On top of all this I didn't even know the corrupt PI's names until your subpoena. I was hired to ID Locate and Document Paul. I am not in this 3 year ago crap. I did not even live here yet.

[Ex. M at Capelli 001066.] After Capelli told Tinsley that her reputation as a PI was "in jeopardy," Tinsley proceeded to advise Capelli about her compliance with his subpoena:

1:26 AM      **Tinsley:** I definitely am not forcing you to do anything. Technically the subpoena is an order of the court that you are required to comply with and it gives you the cover you desire. Parker's lawyers have now filed a motion to stop that, albeit to late and that hearing is happening March 14.

...

1:28 AM      **Capelli:** I have nothing. Literally all I did was locate Paul.

...

1:33 AM      **Capelli:** I shouldn't be texting you this late. I am so angry and I hate being backed into corners. Just make it stop. I can't just hand over evidence. I would be ruined as a PI.

...

2:34 AM **Capelli:** Listen to this on your way into work.

[Sends audio file titled "AUDIO\_7902.m4a".]

8:33 AM **Capelli:** This is not an interview of a bad, corrupt PI willing to cover up illegal activity. She is happy working in the field...

[Ex. M at Capelli 001065.]

***Parker's motion for protective order.***

In this case, Parker's previously moved for a protective order and *in camera* review, asking this Court to conduct a privilege review and bar Tinsley from further review and use of Parker's privileged documents. The Court denied that motion on August 10, 2022. Since then, however, the Supreme Court granted mandamus and ordered Judge Price to conduct a full privilege review. [See Ex. I.] Further, Judge Price has at least partially done so in his May 24, 2023 order, confirming that Tinsley and Vaux received and reviewed Parker's privileged documents. [See Ex. K.]

**ARGUMENT**

"A motion to disqualify counsel is subject to the Court's supervisory authority to ensure fairness in all judicial proceedings." *Meyer v. Anderson*, No. 2:19-cv-640-DCN, 2020 WL 4437851, at \*2 (D.S.C. Aug. 3, 2020). Here, Tinsley and Vaux have fundamentally undermined the fairness of this proceeding through their efforts to review Parker's privileged documents, circumventing the normal procedures for evaluating privilege claims along the way. Tinsley, in particular, sought to duck those procedures through improper direct contact with a person he targeted with a subpoena while he knew that person was represented. The necessary remedy at this point is to disqualify Tinsley and Vaux from any further involvement in this action.

**I. Tinsley and Vaux should be disqualified for their improper pursuit, receipt, and review of Parker's privileged documents.**

Rule 1.6 of the South Carolina Rules of Professional Conduct covers the confidentiality of information, including information subject to the attorney-client and attorney work product privileges. Under that rule, a lawyer “shall not reveal information relating to the representation of a client,” unless an exception has been met, such as to comply with a court order. Rule 1.6(a) & (b)(7), RCP, Rule 407, SCACR. South Carolina's Rules of Civil Procedure more specifically protects “information produced in response to a subpoena [that] is subject to a claim of privilege,” requiring a party who is notified of a claim of privilege to “promptly return, sequester, or destroy the specified information . . . until the claim is resolved.” Rule 45(d)(2)(B), SCRCRCP. Further, Rule 8.4 considers it misconduct for a lawyer to “violate or attempt to violate the Rules of Professional Conduct, [or to] knowingly assist or induce another to do so.” Rule 8.4, RCP, Rule 407, SCACR.

Courts frequently disqualify counsel where they improperly obtain their opponent's privileged information. *See United States v. Quest Diagnostics, Inc.*, 734 F.3d 154, 166–68 (2d Cir. 2013) (affirming disqualification of counsel who improperly obtained confidential information about other party); *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, No. CV 08-1885-GHK AGRX, 2013 WL 2278122, at \*2 (C.D. Cal. May 20, 2013) (disqualifying counsel where counsel “should have known” documents were privileged and should have sought guidance from the court in advance, but transferred them instead to the U.S. Attorney's Office and “repeatedly used them in the pleadings”). This power to disqualify is “necessary to preserve the integrity of the adversary process,” particularly where an attorney may be “in a position to use privileged information concerning the other side” to “give present or subsequent clients an unfair, and unethical, advantage.” *Quest Diagnostics*, 734 F.3d at 166, 168.

Indeed, a court can disqualify counsel based solely on an attorney's extended possession of another party's privileged documents, even if the attorney reviews little to none of the privileged information. *See United States ex rel. Frazier v. IASIS Healthcare Corp.*, No. 2:05-CV-766-R CJ, 2012 WL 130332, at \*5, \*15 (D. Ariz. Jan. 10, 2012) (disqualifying counsel in qui tam action for failure to disclose privileged documents, even where counsel had instructed client not to provide defendant's privileged documents and "never read or relied on" documents she believed might be privileged); *Richards v. Jain*, 168 F. Supp. 2d 1195, 1201 (W.D. Wash. 2001) (disqualifying counsel based on plaintiffs' access to privileged documents for eleven months and failure to notify defense of their possession of such materials, even where counsel's review and knowledge of the documents was not extensive); *Clark v. Super. Ct.*, 196 Cal. App. 4th 37, 45, 55 (2011) (affirming disqualification where counsel reviewed only 36 privileged documents). Where counsel *has* reviewed privileged information, disqualification is proper based on the "possibility that an unfair informational advantage [has been] obtained." *Walker v. GEICO Indem. Co.*, No. 615CV1002ORL41KRS, 2017 WL 1174234, at \*12 (M.D. Fla. Mar. 30, 2017) (disqualifying counsel where "highly impactful" privileged information, albeit disclosed inadvertently, had been "extensively reviewed, discussed, and disseminated"); *see also Arnold v. Cargill Inc.*, No. 01-2086 (DWF/AJB), 2004 WL 2203410, at \*10, \*13 (D. Minn. Sept. 24, 2004) (finding the proceedings had been tainted by the reckless disregard of "the risks associated with playing fast and loose with the rules protecting . . . privileged and confidential material"); *Richards*, 168 F. Supp. 2d at 1200 (holding disqualification "necessary to remedy the substantial taint placed on any future proceeding by the possession and review of the [privileged information]").

Here, Tinsley improperly gained possession of Parker's privileged documents by inducing Senn and her clients to give him Parker's privileged information before Judge Price entered an order

requiring that release. [See Exs. D, E.] Indeed, in light of the mandamus proceedings that followed, Tinsley convinced Laurens Group to give him privileged documents before Judge Price had actually analyzed Parker's claims of privilege. [See Exs. G, H, I.] Those efforts already run afoul of Rule of Professional Conduct 8.4's prohibition on inducing an attorney to violate the rules (like Rule 1.6).

Tinsley then compounded this misconduct by rapidly reviewing thousands of pages of information before Judge Price could enter an actual order and while Parker's privilege claims were still pending, essentially scrambling to take advantage of the situation while Parker's sought to protect itself against Tinsley's actions. He then continued to use his ill-gotten review to try and "help" Judge Price by providing pages he had "dog-eared"—an effort that should not be possible under normal processes for evaluating a party's privilege claim in response to a subpoena. [See Ex. J at 2.] Vaux engaged in similar misconduct, receiving Parker's privileged information from Tinsley and reviewing them to the point that he could determine which ones were useful to Plaintiff, or at least to the point that he could separate them into organized volumes. Such a review of the contents of potentially-privileged material goes well beyond what may be necessary to ascertain if the materials are privileged. *See Clark*, 196 Cal. App. 4th at 53 & n.8 (observing that assessment of documents' dominant purpose "necessarily involved an assessment of [their] contents" and questioning how "content-specific characterization[s] of those documents could have been proffered . . . without an in-depth examination of the content of those documents").

Judge Price's assessment eventually showed that Tinsley and Vaux had, based on their prior admissions, reviewed at least 215 pages of Parker's privileged information, detailing case strategy and attorney work product pertaining to this litigation. [See Ex. K.] That knowledge of Parker's litigation strategy taints not only the Conspiracy Lawsuit, but this case. Tinsley sought the documents from Inquiry Agency and Laurens Group based on his belief about their value in this case, and Tinsley

and Vaux are substantially likely to use the information they obtained against Parker's here. Moreover, Tinsley and Vaux cannot simply un-know the information they have reviewed. As the Fourth Circuit observed in the context of a government seizure of privileged emails, "an adverse party's review of privileged materials seriously injures the privilege holder." *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 175 (4th Cir. 2019). Such harm is "plainly irreparable," as the recipient's "review of those privileged materials cannot be undone." *Id.* Judge Price put it more colorfully: "The cat's out of the bag. I mean, I can't stuff the mash potato [back] into the bag." [Ex. F at 10:25-11:3.] Rather than providing a reason to let the matter slide, Tinsley and Vaux's improper possession and review of Parker's privileged information has a ready and appropriate remedy: disqualification.

Disqualification is particularly necessary in light of Tinsley's reckless handling of the privileged and potentially-privileged information he has obtained. Despite a direct order not to disseminate any of the Laurens Group files [Ex. F at 11:22-25], Tinsley disclosed information about those documents in emails which copied counsel for parties who could have no right to access or review the documents in dispute. This includes disseminating screenshots of two documents which were later found to be privileged by Judge Price, a screenshot of a surveillance video for which Parker's privilege assertion is still pending. Moreover, the day after Judge Price entered an order determining what documents (of the set Vaux tendered) were privileged, Tinsley sent an email to all parties in the Conspiracy Lawsuit (again including those with no right to access Parker's privileged documents) improperly discussing an investigative report Judge Price found to be privileged. Tinsley's and Vaux's scorched-earth efforts to obtain and use information about Parker's strategy for responding to this lawsuit must bear a cost. That cost should be their disqualification as counsel here.

The Court should also order Plaintiff to return or destroy the privileged documents in her or her counsel's possession, verified by an affidavit. Such an order, compelling the return of hard-copy documents and erasure of electronic documents deemed privileged, is a proper response to the improper possession of privileged material, even if the possession followed an inadvertent disclosure. *See Carolina Park Associates, LLC v. Marino*, No. 2010-CP-10-6042, 2011 WL 9369845 (S.C.Com.Pl. June 28, 2011); *see also Clark*, 196 Cal. App. 4th at 45, 54-55 (affirming order requiring that privileged documents be returned). Requiring that the return or destruction of privileged documents be verified by affidavit is likewise a proper practice. *See, e.g., H.L. Hayden Co. of New York v. Siemens Med. Sys., Inc.*, 130 F.R.D. 281, 282 (S.D.N.Y. 1989) (requiring verification of destruction of sensitive material by affidavit via the enforcement of a protective order); *Samsung Elecs. Co. v. Solas Oled Ltd.*, No. 1:21-CV-05205 (LGS), 2021 WL 5154141, at \*7 (S.D.N.Y. Nov. 5, 2021) (issuing a protective order that included the requirement a receiving party "shall verify the return or destruction by affidavit"); *see also Singletary Constr., LLC v. Reda Home Builders, Inc.*, No. 3:17-CV-374-JPM, 2019 WL 6870353, at \*3 (M.D. Tenn. May 23, 2019) (holding, in a copyright infringement case, that parties possessing infringing material "must identify each specific document that they have destroyed and must verify under penalty of perjury the time, place, and manner of such destruction"). Such measures are particularly necessary here, in light of Tinsley and Vaux's intentional efforts to obtain and review Parker's privileged information and their reckless dissemination of it.<sup>19</sup>

---

<sup>19</sup> To the extent Plaintiff would retain information gained from Tinsley and Vaux's review of Parker's privileged documents even after their return or destruction, the Court should also issue an order precluding Plaintiff from using any information obtained from the improperly-obtained documents in this litigation.

**II. Tinsley should be disqualified for his improper communications with a person represented by counsel.**

Rule 4.2 of the South Carolina Rules of Professional Conduct provides: “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” Rule 4.2, RPC, Rule 407, SCACR. This Rule “contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer against” various ills, including: (1) “possible overreaching by other lawyers who are participating in the matter,” (2) “interference by those lawyers with the client lawyer relationship,” and (3) “the uncounselled disclosure of information relating to the representation.” Rule 4.2 cmt. [1], RPC, Rule 407, SCACR. Rule 4.1 “applies even though [the] represented person initiates or consents to the communication.” Rule 4.2 cmt. [3], RPC, Rule 407, SCACR. If, after a communication starts, a lawyer “learns that the person is one with whom communication is not permitted” by Rule 4.2, the lawyer “must immediately terminate communication with” the represented person. *Id.*

Here, Tinsley’s quest to get the upper hand on Parker’s led him to repeatedly and improperly contact Sara Cappelli and extract information from her, despite knowing that she was represented by counsel. Contrary to what he told Judge Price [*see* Ex. L at 11:11-12:20], it appears that Tinsley initiated contact with Sara Capelli outside of the subpoena process. [*See generally* Ex. M.] Tinsley never asked whether Capelli had an attorney regarding the subpoena he issued. Regardless, he plainly knew Capelli was represented regarding the subpoena by January 31, 2022, when Cheryl Shoun of Nexsen Pruet told him so. Here again, rather than engage in the normal process to resolve a dispute over subpoenaed documents, Tinsley sought to skirt the rules. He went behind Shoun’s back and continued talking to Capelli directly, despite repeatedly acknowledging

that Capelli currently had counsel. [See generally Ex. M.] Even where Capelli continued the conversation, Rule 4.2 gave Tinsley a simple command: stop talking to Capelli about the subpoena.

But Tinsley didn't stop. He not only kept talking to Capelli, but coaxed her to terminate her representation by Nexsen Pruet. As Tinsley put it, he was "trying to get [Capelli] to see the light" and give him information. [Ex. M at Capelli 001072] Tinsley's statements that he could talk more fully with Capelli once she did so are, at best, a fig leaf to cover himself against the situation in which he now finds himself. Rule 4.2's command is to "immediately terminate" communication with the represented person, not to maintain contact and encourage that person to find a way to provide the information you want. See Rule 4.2 cmt. [3], RPC, Rule 407, SCACR. And Tinsley went even further than simply saying he could not talk to Capelli yet. He assured her that he "won't let Parker do anything to you," insinuating himself as an advocate *for* Capelli, despite being plainly *adverse* to her regarding the subpoena. [Ex. M at Capelli 001073.] He suggested that Capelli terminate her current counsel by email, for simplicity. [*Id.* at Capelli 001071, 001073.] He advised Capelli that he "honestly [didn't] think" she needed counsel in regards to the subpoena.<sup>20</sup> [*Id.* at Capelli 001071.] He offered his assessments about Capelli's efforts to fire her counsel, implicitly encouraging her to do so and hindering her ability to obtain legal advice about her obligations. [*Id.* at Capelli 001071] When Capelli pointed out Tinsley's violations of Rule 4.2, Tinsley laughed it off, saying he was "not worried about [his] communications." [*Id.* at Capelli 001069.]

---

<sup>20</sup> If Tinsley believed that Capelli was or would soon be unrepresented, this statement arguably adds a violation of Rule 4.3 to Tinsley's misconduct, as that rule prohibits a lawyer from "giv[ing] legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client." Rule 4.3, RPC, Rule 407, SCACR. Given Capelli's repeated resistance to providing information, her interests were plainly adverse to Plaintiff's and Tinsley's.

These are not the acts of someone trying to abide by Rule 4.2 in good faith. They are the acts of someone repeatedly trying to pry information about an adversary from a person they know to be represented. Moreover, Tinsley knew (or should have known) that Capelli was particularly susceptible to the imbalance of knowledge and power between a lawyer and the layperson from whom they are seeking to compel documents. Almost immediately after she followed Tinsley's encouragement and terminated Nexsen Pruet, Capelli repeatedly told Tinsley that she feared for her reputation as a PI and tried to say that she had no useful information. [Ex. M at Capelli 001066-67, 001070.] She told Tinsley that he "kept boxing [her] in" while she "couldn't find counsel." [*Id.* at Capelli 001067.] As Tinsley continued to press for information, trying to persuade Capelli of Parker's perfidy along the way, Capelli begged Tinsley that she "need[ed] this to stop" because of the burden of her involvement and the fact that, in her view, she had "nothing." [*Id.* at Capelli 001066-67.] Rather than back off, Tinsley pressed harder, confirming his intent to pry into Capelli's work for Parker's, trying to find something "Parker doesn't want me to see." [*Id.* at Capelli 001066.] Tinsley even offered more legal advice to the now-unrepresented person he sought to compel documents from, misleadingly telling Capelli that he was "not forcing [her] to do anything" because "technically the subpoena is an order of the court that you are required to comply with." [*Id.* at Capelli 001065.] Tinsley eventually wore Capelli down, and she sent him an audio file from her investigation. [*Id.* at Capelli 001064.]

This is just the kind of exploitation of a non-lawyer that the Rules of Professional Conduct seek to prevent. Rule 4.2, in particular, exists to protect against "possible overreaching by other lawyers who are participating in the matter," "interference by those lawyers with the client lawyer relationship," and "uncounselled disclosure of information relating to the representation." Rule 4.2 cmt. [1], RPC, Rule 407, SCACR. Tinsley's repeated communications undermined all three of

those purposes, as part of an effort to wring information about Parker’s from Capelli both while he knew she had counsel and while she told him she was trying to obtain counsel. In short, Tinsley ignored his ethical obligations in pursuit of a tactical advantage in this litigation. That disregard for the Rules of Professional Conduct warrants disqualification here.

### CONCLUSION

To use his own words, Tinsley says he “tr[ies] to be crafty.” [Ex. M at Capelli 001069.] But there is a line between “crafty” uses of normal legal procedures and unethical skullduggery. Tinsley has blown right past it.

Tinsley used subpoenas in the Conspiracy Lawsuit—a case based primarily on his own rogue investigative efforts—to dig up information about Parker’s strategy to defend itself in this case. He then scrambled not only to obtain, but to fully review, documents from one target of the subpoenas which Parker’s claimed were privileged. He did so before Judge Price actually ordered those documents’ production and before that court had actually reviewed Parker’s privilege claims. Tinsley and Vaux brazenly admitted that they had thoroughly reviewed these potentially-privileged documents, offering documents for privilege review based on what *they* thought would be useful to Plaintiff at trial. At the same time, Tinsley sought to circumvent counsel for the other target of his subpoenas by directly communicating with that target, coaxing her into firing her counsel, offering her legal advice that hindered her ability to evaluate her obligations, and insinuating himself as an ally rather than the adversary he necessarily was.

Tinsley’s and Vaux’s belief in the righteousness of their cause does not justify their disregard for normal legal processes and ethical responsibilities. South Carolina courts are rightfully concerned about attorneys exhibiting such a “win at all costs” attitude. *Cf. State v. Inman*, 395 S.C. 539, 564 n.18, 720 S.E.2d 31, 44 n.18 (2011) (expressing concern with solicitor’s office’s “pattern of

misconduct” after solicitor implicitly threatened defense expert with prosecution). To properly enforce the Rules of Professional Conduct and to ensure Parker’s right to a fair trial, the Court should (1) disqualify Tinsley and Vaux from further participating in this case as counsel; (2) order the return or destruction of any privileged materials in Plaintiff’s possession, verified by affidavit; and (3) bar Plaintiff from using the information gained from Tinsley’s and Vaux’s improper review of Parker’s privileged information.

Respectfully submitted,

/s/ David L. Williford

David L. Williford, Esq. (S.C. Bar # 73129)  
Huff, Powell & Bailey, LLC  
15 South Main Street, Suite 602  
Greenville, SC 29601  
(864) 400-5949  
[dwilliford@huffpowellbailey.com](mailto:dwilliford@huffpowellbailey.com)

Pankaj “PK” Shere, Esq. (*Pro Hac Vice*)  
Joshua M. Hiller (*Pro Hac Vice*)  
Huff, Powell & Bailey, LLC  
3737 Glenwood Drive, Suite 370  
Raleigh, NC 27612  
(984) 238-2380  
[pkshere@huffpowellbailey.com](mailto:pkshere@huffpowellbailey.com)  
[jhiller@huffpowellbailey.com](mailto:jhiller@huffpowellbailey.com)

Sharonda B. Barnes, Esq. (*Pro Hac Vice*)  
Huff, Powell & Bailey, LLC  
999 Peachtree Street, Suite 950  
Atlanta, GA 30309  
(404) 892-4022  
[sbarnes@huffpowellbailey.com](mailto:sbarnes@huffpowellbailey.com)

G. Murrell Smith, Jr., Esq. (S.C. Bar # 66263)  
Austin T. Reed (S.C. Bar # 102808)  
Smith | Robinson  
P.O. Box 580  
Sumter, SC 29151-0580  
(803) 778-2471  
[murrell@smithrobinsonlaw.com](mailto:murrell@smithrobinsonlaw.com)

*Attorneys for Gregory M. Parker, Inc. d/b/a Parker's Corporation*

June 13, 2023  
Greenville, South Carolina