THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jan 16 2024
S.C. SUPREME COURT

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PETITION FROM HAMPTON COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

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Case No. 2021-CP-25-00392

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Renee S. Beach, Phillip Beach, Robin Beach, Savannah Tuten, and Seth Tuten, ..... Plaintiffs,

v.

Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation, Blake Greco, and Jason D'Cruz, Vicky Ward, Max Fratoddi, Henry Rosado, and Private Investigation Services Group, LLC, ..... Defendants,

Of whom

Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation, Blake Greco, and Jason D'Cruz, are ..... Petitioners,

And

Bentley Price, in his official capacity as Hampton County Circuit Court Judge, *In re*: Civil Action No. 2021-CP-25-00392, is ..... Respondent.

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**PETITION FOR A WRIT OF PROHIBITION IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT AND MOTION FOR STAY**

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January 16, 2024
Columbia, South Carolina

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## INTRODUCTION

Pursuant to Rule 245(b) of the South Carolina Appellate Court Rules, Petitioners Defendants Gregory M. Parker ("**Mr. Parker**"), Gregory M. Parker, Inc. d/b/a Parker's Corporation ("**Parker's Corporation**"), Blake Greco ("**Mr. Greco**"), and Jason D'Cruz ("**Mr. D'Cruz**") (collectively, "**Petitioners**"), by and through their undersigned attorneys, respectfully petition for a Writ of Prohibition to issue in the original jurisdiction of the Supreme Court, prohibiting the Honorable Bentley D. Price, Circuit Court Judge, from adjudicating the pending motions and otherwise continuing to preside over the underlying action. Petitioners have requested in two separate letters, dated December 22, 2023 and January 3, 2024, that Judge Price voluntarily withdraw from and not schedule any further hearings in this matter. Judge Price has not responded to the request to withdraw, but Petitioners do not believe their request will be granted as his staff sent an e-mail on January 11, 2024 indicating he has calendared this case for a hearing on January 24, 2024. Therefore, as detailed herein, while Petitioners are today moving for a stay of this matter by Judge Price until this Court acts on this Petition, Petitioners do not believe that request will be granted. Therefore, Petitioners also request this Court immediately stay the case in the Circuit Court until this Court acts on this Petition.

In the early stages of litigation, Plaintiffs' counsel requested the action be designated as "complex" and assigned exclusively to Judge Price as the then-Chief Administrative Judge for the Court of Common Pleas in the Fourteenth Judicial Circuit. Judge Price agreed this case would be well served to have one judge assigned from discovery through the end of trial and did as Plaintiffs' counsel requested. However, Judge Price recently withdrew from reelection as a circuit court judge following the South Carolina Judicial Merit Selection Commission's ("**JMSC**") decision not to nominate Judge Price for election to a second term. Because the underlying action will extend

much farther beyond the end of Judge Price's current term, Petitioners respectfully submit that Judge Price should withdraw from this case, as withdrawal would be in accordance with Judge Price's prior determination that this case should be assigned to one judge from discovery through trial. Additionally, beyond the practical reasons above, there are a number of reasons to question Judge Price's impartiality and qualifications to continue to preside as the assigned judge in this case.

First, as set forth more fully herein, Judge Price has made inconsistent rulings on whether he would conduct a proper privilege review and determination, initially indicating he would, but quickly thereafter refusing to conduct such a review and determination. Judge Price was then subject to two corrections by this Court. Unfortunately, there also remain outstanding issues over a number of documents that Judge Price has deemed both privileged and not privileged, such that his current ruling contains significant inconsistencies. Petitioners' Motion to Reconsider, which highlighted these inconsistencies in the hopes of having them corrected one way or the other, was denied without a hearing. This perfunctory denial of Petitioners' request for a hearing stands in contrast to Judge Price's willingness to hold a hearing on Plaintiffs' Motion to Reconsider the same Order, which raises legitimate questions as to Judge Price's lack of impartiality in this case and his preferential treatment demonstrated towards Plaintiffs' counsel in this matter.

The purpose of judicial disqualification is to avoid even the appearance of partiality. Based on the foregoing and as set forth more fully herein, there are a number of substantive grounds that raise reasonable questions as to Judge Price's lack of impartiality. Petitioners have the right to their case being heard by an impartial judge, a right which will be violated if Judge Price continues to preside over the underlying action. Because ordinary appellate proceedings will not be sufficient to remedy this issue, Petitioners' only recourse is for a writ of prohibition from this Court to

prevent improper prejudice from irreparably infecting this matter.

Second, Petitioners retained Professor Nathan Crystal ("**Professor Crystal**") as an expert witness in the underlying action and his testimony will be relevant and necessary for one of the more critical, pending motions, including Petitioners Mr. D'Cruz and Mr. Greco's Motion to Dismiss as well as whether Plaintiffs' counsel should be disqualified in this matter.[1] Petitioners' understanding from a review of public reports is that the JMSC received testimony concerning Judge Price's handling of two cases in which Professor Crystal opined as an expert witness. Professor Crystal testified that Judge Price should have disqualified himself in those matters following Judge Price's intemperate written communications with litigants in that matter—and those communications and Judge Price's conduct in those cases appear to have figured largely in the JMSC's decision outlined above as only three witnesses appeared at screening to testify against Judge Price, and two of those witnesses were lawyers involved in those cases. *See* Ema Rose Schumer, *Embattled Charleston judge defends his record in effort to stay on SC bench*, Post &

[1] Petitioners previously filed a Motion to Disqualify Attorney Mark Tinsley on September 27, 2022. This initial motion was based on the following grounds: (1) Mr. Tinsley's improper receipt and review of privileged documents, as established vis-à-vis the Court's May 24, 2023 Order; (2) his contravention of the advocate-witness rule; and (3) his improper communication with a represented third party (i.e. violation of the no-contact rule). This initial motion has been pending for over fifteen (15) months. Petitioners later filed a Supplemental Motion to Disqualify Plaintiffs' Counsel—i.e. both Mr. Tinsley and Tabor Vaux—on June 5, 2023. This supplemental motion was based on the original grounds, including Mr. Vaux's improper receipt and review of privileged documents, as well as Mr. Tinsley's improper disclosure of privileged information and material to persons not authorized to have them. This supplemental motion has been pending for over six (6) months.

Additionally, Petitioners issued subpoenas on three separate occasions to Plaintiffs' counsel, seeking documents and information that will likely further support the grounds for their disqualification. To date, Plaintiffs' counsel have refused to produce any responsive records. Thus, Petitioners filed three separate Motions to Compel responses to subpoenas issued to Plaintiffs' counsel. These motions were filed on July 13, 2022, March 31, 2023, and June 19, 2023, and therefore have been pending for a substantial time as well. As Petitioners have made clear in earlier pleadings, all motions filed to date concerning the litigation of this case have been caused and are in response to the actions of Plaintiffs' current counsel and are not and have not been directed at Plaintiffs themselves.

Courier (Nov. 15, 2023), *available at* https://www.postandcourier.com/news/embattled-charleston-judge-defends-his-record-in-effort-to-stay-on-sc-bench/article_752fab1a-80fc-11ee-9dec-4bd26afcb623.html. Accordingly, there are substantial questions as to Judge Price's ability to impartially assess Professor Crystal's opinions and testimony in this case, because Professor Crystal previously opined that Judge Price should himself be disqualified in those cases.

## STATEMENT OF THE CASE

### A. *Case Background and Subpoenas*

Mallory Beach tragically died as a result of a boat crash in the early hours of February 24, 2019, resulting in litigation involving the Murdaugh family, the Parker's Corporation, and others (the "**Related Civil Action**"). The instant action was filed on December 3, 2021 and alleges causes of action for civil conspiracy and intentional infliction of emotional distress as a result of the alleged disclosure by Petitioners of mediation material used in the Related Civil Action.

The initial mediation conducted in the Related Civil Action[2] occurred on September 10, 2020. As part of that mediation, Mark Tinsley, Plaintiff's[3] counsel in the Related Civil Action (as well as Plaintiffs' primary counsel in the instant action) ("**Mr. Tinsley**"), e-mailed a Dropbox link to counsel for Parker's Corporation, and indicated he was producing a video "pursuant to the mediation rules and as part of the confidential mediation process." The video and other photographs are referenced herein as the "Mediation Video and Photographs." On November 24, 2021, Vicky Ward ("**Ms. Ward**"),[4] who had been working on a documentary about the murders of Maggie and Paul Murdaugh—the late wife and son of Richard Alexander "Alex"Murdaugh, a defendant in the

[2] The Related Civil Action was settled as to all parties to that action in late July 2023.
[3] As there was only one plaintiff in the Related Civil Action, the singular possessive is used with reference to that case.
[4] Ms. Ward was originally a defendant in the underlying action, but since the original Petition to this Court, was voluntarily dismissed as a defendant by Plaintiffs through their counsel.

Related Civil Action—published a trailer for the documentary that Plaintiffs allege contains six different sections from the Mediation Video.

Six days later, on November 30, 2021, Plaintiff's counsel filed a Motion for a Rule to Show Cause ("**RTSC**") in the Related Civil Action arguing the Parker's Corporation and its representatives should be held in contempt and sanctioned for violating the confidentiality requirements of Rule 8(a) of the South Carolina Alternative Dispute Resolution Rules. Plaintiff's RTSC relied solely upon unsupported allegations made by Mr. Tinsley that Ms. Ward had confirmed that she possessed the Mediation Video and purchased the "Beach case file" from Mr. Parker and the law firm representing him. However, on or before October 5, 2021, Ms. Ward categorically denied ever purchasing such materials in a statement made by and through her attorney. On December 8, 2021, Ms. Ward released a second statement, further denying she purchased any material as well as denying she had ever met with or spoken to Mr. Parker or his lawyers. Parker's Corporation responded to the RTSC and attempted to force a hearing. However, Plaintiff's counsel thereafter withdrew the RTSC and filed the underlying action on December 3, 2021.

In January and February 2022, Plaintiffs' counsel issued subpoenas to: (1) Inquiry Agency, LLC ("**Inquiry Agency**"), operating through Sara Capelli ("**Ms. Capelli**"), and (2) Laurens Group / Push Digital, LLC, operating at the direction of Wesley Donehue ("**Mr. Donehue**"), (collectively, the "**Subpoenaed Third Parties**"). The files within their possession, custody, or control are referenced herein as the "Inquiry Agency Files" and the "Laurens Group Files," respectively. Of note, these subpoenas were issued before counsel for Plaintiffs even attempted to serve the Complaint on Petitioners, who were also purposely not copied on the subpoenas. The apparent intent behind these surreptitious actions by Plaintiffs' counsel was to

obtain documents he knew he was not legally allowed to obtain. However, counsel for the recipients of the subpoenas objected to the subpoenas and/or noted that objections by counsel for Petitioners to those subpoenas existed.[5]

The subpoenas requested information from certain investigators and firms retained by the firm employing Mr. D'Cruz, who served as the attorney for Mr. Parker. Mr. D'Cruz engaged and retained these investigative services for, among other purposes, to advise and counsel Mr. Parker for legal purposes related to the Related Civil Action and in anticipation of future litigation.[6] The subpoenas are unlikely to produce information related to the instant case or lead to the discovery of relevant and/or admissible evidence in this case or any other action currently filed against any of the named defendants in this action.

Petitioners immediately filed a Motion to Quash and for a Protective Order on February 24, 2022, and filed a corresponding Memorandum in Support on March 15, 2022, explaining why the information sought was overbroad, irrelevant, and protected by both the attorney work product doctrine and attorney-client privilege. After the March 16, 2022 hearing on Petitioners' Motion to Quash, Judge Price issued a one-paragraph order on March 28, 2022 denying Petitioners' Motion to Quash and ordered the Subpoenaed Third Parties to produce the information to Plaintiffs within

[5] Nexsen Pruet, LLC originally represented Inquiry Agency and Ms. Capelli, in addition to Petitioners, and submitted objections to the subpoenas to Plaintiffs' counsel on behalf of Inquiry Agency and Ms. Capelli. However, neither Nexsen Pruet, LLC (nor its successor Maynard Nexsen PC) currently represents Inquiry Agency or Ms. Capelli as Ms. Capelli subsequently retained other counsel. Nevertheless, Petitioners, as parties in interest, maintain the objections previously submitted by Inquiry Agency and Ms. Capelli.

[6] Additionally, as stated previously, the underlying action is exclusively based on the alleged disclosure of the Mediation Video and Photographs. However, none of the subpoenas references the Mediation Video or Photographs. Instead, the subpoenas seek "any and all" documents related to text messages, e-mails, materials, nondisclosure agreements, retainers, billing statements, receipts, research, surveillance records, and so forth, as well as identification of social media accounts and mobile phone service providers, without any attempt to narrow the requests to this underlying action and its allegations. Notably, there is ***no*** time limitation included in the requests.

thirty (30) days. On March 30, 2022, Petitioners filed a Motion to Reconsider in Part, and Judge Price held a telephone conference on April 1, 2022. In an order filed on April 6, 2022, Judge Price reversed his initial order by requiring all discovery be submitted for an *in camera* review ("**April 6 Order**"). Judge Price ordered the Subpoenaed Third Parties to provide their investigatory files to Petitioners so that they could prepare a privilege log. The April 6 Order specifically stated that once Judge Price determined all issues related to relevance and privilege, Petitioners would have "ten (10) business days to respond with objections on the record, and . . . [would] also have the applicable time by which to file an appeal in accordance with the South Carolina Rules of Civil Procedure." Based on the April 6 Order, Petitioners began to prepare a privilege log to submit to Judge Price for the *in camera* review.

### B. ***Complex Case Designation and Privilege Dispute***

On Friday, April 29, 2022, a hearing was scheduled on Petitioners' Motions to Dismiss.[7] Due to a conflict, however, the hearing on those motions was continued. Judge Price informed the parties through an e-mail from his law clerk dated April 28, 2022, that he "would like to discuss the in camera review of documents pertaining to" the Motion to Quash and Motion for Rule to Show Cause at the hearing on the April 29, 2022. In an e-mail submitted the day before, on April 28, 2022, Plaintiffs' counsel requested the action be designated as "complex" and assigned exclusively to Judge Price. Judge Price concluded the matter should be designated as complex, such that only one judge should be assigned to oversee the case from discovery through the end of trial. He then assigned the case to himself.

[7] Petitioners' Motions to Dismiss remain pending. Petitioners have argued in other pleadings that they should receive the requested discovery relevant to their Motions to Disqualify first and then have those Motions to Disqualify heard next. Petitioners submit Plaintiffs' current primary counsel should ***not*** be allowed to argue Petitioners' Motions to Dismiss, as they are in possession of a trove of privileged material—a situation that was arguably allowed to an extent by imprecision and error on the part of Judge Price and which has since unfortunately gone uncorrected by Judge Price.

Judge Price then turned to the discovery issues and noted that he had received 5,600 documents and some videos and pictures for the *in camera* review. Plaintiffs' counsel stated it was incredibly difficult for him to discuss the issues because there was not a privilege log for him to use so he could evaluate the assertion of privilege. Petitioners informed Judge Price they were approximately halfway through preparing the privilege log and requested thirty (30) days within which to complete the log. After some general discussion of whether these documents might be privileged, Petitioners stated that, even if the documents were not privileged, these documents do not support the allegations in the Plaintiffs' Complaint. At the end of the hearing, Petitioners argued the process Judge Price had begun should continue, and Plaintiffs could review the privilege log when it was completed and make objections to the designations of privilege. Counsel for Plaintiffs agreed, stating the "process does have to work." Petitioners then asked if Judge Price would grant them thirty (30) days to complete the privilege log. Judge Price stated he would let Petitioners know by the end of the day, and the hearing ended. Judge Price gave no indication that he was considering ordering the production of the documents without following the process he had previously ordered in his April 6 Order, quoted above.

Later that same day, at 4:44 pm, Judge Price's law clerk e-mailed all counsel and, to Petitioners' surprise, indicated Judge Price was planning on reversing his prior order again and ordering disclosure of all the documents without a privilege log. Petitioners responded to the law clerk early on Monday, May 2, 2022 (the next business day), to ask if Judge Price were going to issue a Form 4 order or written order, to which the law clerk responded that a Form 4 Order would be forthcoming. Even though Judge Price had yet to issue his Order, Plaintiffs' counsel did not wait for an Order from Judge Price before seeking to immediately obtain and review privileged

materials.[8]

On May 3, 2022, Petitioners' counsel learned for the first time that the prior Friday, April 29, 2022, Plaintiffs' counsel had contacted Sandy Senn ("**Ms. Senn**"), counsel for Mr. Donehue, PUSH Digital, LLC, and Laurens Group, and had already received some of the subpoenaed privileged documents over the weekend based upon the law clerk's e-mail. Plaintiffs' counsel used the law clerk's e-mail, which he knew was not a final order, to induce Ms. Senn and her clients to disclose the privileged documents Plaintiffs' counsel was so desperate to obtain. Specifically, immediately after receiving the law clerk's e-mail on Friday, April 29, 2022, Plaintiffs' counsel forwarded this e-mail to Ms. Senn.[9] Similar to the initial improper subpoenas sent, Plaintiffs' counsel did not copy counsel for Petitioners on this e-mail or otherwise provide notice. Plaintiffs' counsel's improper actions were successful and he thereafter received some of the subpoenaed privileged documents on Sunday, May 1, 2022—prior to an Order from Judge Price and despite the clear language in the April 6 Order, which provided Petitioners ten (10) days to object and the applicable time for an appeal.

The same day, May 3, 2022, Petitioners filed an Emergency Motion for a Protective Order with Judge Price, requesting him to issue an order prohibiting Plaintiffs' counsel from disseminating or reviewing any of the subpoenaed privileged documents obtained and allowing Petitioners time to appeal any forthcoming order from Judge Price, as provided in the April 6

[8] Mr. Tinsley knew or should have known the law clerk's April 29, 2002 e-mail did not amount to an official court order. Rules 54 and 58 of the South Carolina Rules of Civil Procedure require that an order be entered before it is considered officially rendered. Further, Rule 203 of the South Carolina Appellate Court Rules only allows for an appeal "after receipt of written notice ***of entry of the order or judgment***." Rule 203, SCACR (emphasis added).

[9] Notably, according to Ms. Senn, Mr. Tinsley not only forwarded the e-mail "from the law clerk," but then "reached out" again to her at some point after forwarding the e-mail. Mr. Tinsley failed to mention this second contact in his e-mail to counsel for Petitioners.

Order. Then, on May 6, 2022, Judge Price issued a Form 4 Order, holding:

> For the Purposes [*sic*] of the discovery phase, all available documents shall be produced to the Plaintiff [*sic*] within 15 days of the date of April 29, 2022 without a privilege log. Any objections by the defense will be taken up pretrial as to the admissibility of any privileged documents at trial.

On May 9, 2022, Judge Price conducted a hearing on Petitioners' Emergency Motion for Protective Order. During the hearing, Mr. Tinsley stated on the record that over that weekend and prior to the issuance of Judge Price's Form 4 Order on May 6, 2022, he had not only received the entire Laurens Group File, but he had also reviewed the entire file, comprised of approximately 6,000 pages of privileged documents. Petitioners requested that Judge Price order Mr. Tinsley to stop reviewing the material during this May 9, 2022 hearing, and again later in a letter filed with Judge Price on December 1, 2022. Despite these requests, it is abundantly clear that Plaintiffs' counsel have reviewed the Laurens Group Files extensively, because Mr. Tinsley indicated he had reviewed to the point of "dog-earing" the pages and they compiled six sets of documents they intend to use[10]; moreover, Plaintiffs' counsel appear to have improperly and inappropriately solicited, obtained, and reviewed all or portions of the Inquiry Agency Files as well. Additionally, during the May 9, 2022 hearing, Petitioners expressly requested Judge Price to order Mr. Tinsley not to disseminate or continue reviewing the documents. Judge Price stated he "trust[ed]" Mr.

[10] Petitioners have consistently requested that telephonic status conferences be on the record, with a court reporter present. Unfortunately, a status conference held on November 22, 2022 was not transcribed because no court reporter was present. It was during this status conference in which Mr. Tinsley stated he had "gone through and 'dog- eared' documents" from the Laurens Group Files. Later during that same status conference, Mr. Tinsley indicated he was willing to communicate with counsel for Petitioners and stated he did not mind "pulling all those 'dog-ears' out," so that he and counsel for Petitioners could "hash them out," or words to that effect. In other words, Mr. Tinsley offered to continue reviewing documents over which Petitioners have asserted privilege in order to come to some sort of an agreement on the privilege review. This statement and other matters discussed in the status conference were summarized in the December 1, 2022 letter to Judge Price.

Tinsley, and therefore only ordered Mr. Tinsley not to disseminate the documents and expressly and erroneously declined to order Mr. Tinsley to stop reviewing and to return the documents. (Exhibit A, Hearing Transcript of May 9, 2022, p. 11, l. 16 – p. 12, l. 5.)

### C. ***First Petition to this Court and the* Ex Parte *Hearing***

Because Judge Price failed to conduct a privilege review as required by the South Carolina Supreme Court's precedents, Petitioners filed a Petition for Writ of Mandamus on May 20, 2022. In an Order dated September 15, 2022, the Supreme Court held the Petition for Writ of Mandamus in abeyance and directed Judge Price to advise within fifteen days whether he "finally determined the evidence subpoenaed was not privileged and was, therefore, discoverable." The following day, Judge Price conducted a telephonic status conference, which was not transcribed, as again no court reporter was present. As Judge Price had not requested a privilege log prior to this date, Petitioners immediately submitted their privilege log and a letter summarizing the telephone status conference to Judge Price and Plaintiffs the following day, on September 16, 2022. On September 20, 2022, Judge Price submitted a letter to the Supreme Court indicating that he had "not made a final determination as to privilege," and that he intended "to review the privilege log [submitted by Petitioners] and [would] make specific findings of fact."

On October 5, 2022, this Court granted the Petition for Writ of Mandamus and ordered Judge Price to review the entire privilege log submitted by Petitioners along with all documents over which Petitioners asserted privilege. In addition, the Supreme Court ordered Judge Price to "make a final determination, with specific findings as to each document" within the Inquiry Agency File and the Laurens Group Files on the privilege log that are subject to attorney-client privilege or protected by the attorney work product doctrine.

On November 21, 2022, Judge Price, via his law clerk, requested a telephonic status

conference regarding the privilege log submitted by Petitioners on September 16, 2022. Following the status conference[11] on November 22, 2022, Judge Price requested a more detailed privilege log on November 28, 2022, which prompted several e-mail exchanges with Judge Price and counsel of record in the case. On December 2, 2022, Judge Price directed Petitioners to submit an updated privilege log, which was submitted to Judge Price and Plaintiffs on January 3, 2023.[12]

Judge Price scheduled an *ex parte*, *in camera* hearing for February 16, 2023. Counsel for Petitioners were present at the hearing as was Tabor Vaux ("**Mr. Vaux**") as counsel for Plaintiffs. At the outset of the hearing, Judge Price indicated it would be most efficient to determine which documents from the subpoenaed files Plaintiffs' counsel selected and Mr. Vaux then provided Judge Price with one hard-copy of five separate sets of documents purportedly from the Laurens Group Files, none of which was Bates-stamped.[13] Judge Price then excused Mr. Vaux and sealed the courtroom in order to conduct an *in camera*, *ex parte* hearing with counsel for Petitioners. Judge Price received the only copy of Mr. Vaux's production, and the hearing was both protracted and disjointed as a result. Given that: (1) Petitioners did not know the review was going to be limited

[11] No transcript of this status conference is available as no court reporter was present.

[12] While Petitioners respectfully believe that their original privilege log was sufficient for Judge Price to make correct findings of fact and conclusions of law as to the privileged nature of the documents at issue, Petitioners proceeded as directed by Judge Price. Judge Price required a more comprehensive privilege log—and based on Judge Price's direction, Petitioners provided an exhaustive log detailing element-by-element each privilege asserted and explaining why each of the thousands of documents met each of the elements.

[13] Petitioners were not advised prior to the hearing that Judge Price intended to discuss only the documents that Mr. Tinsley and Mr. Vaux had selected. Although Mr. Tinsley indicated in a November 29, 2022 e-mail to Judge Price that he was pulling documents he was primarily interested in and was going to Bates-stamp them himself, Judge Price did not indicate prior to the hearing that it intended to proceed in the manner that Mr. Tinsley suggested. Mr. Vaux arrived at the hearing with only one hard-copy of five categories of these particular documents without providing any notice to Petitioners of his intention to do so—and these documents were, notably, not Bates-stamped and no copy was provided to Petitioners. Moreover, as noted herein, the Supreme Court did not direct Judge Price to review only the subpoenaed documents that counsel for Plaintiffs' counsel had selected; rather, it directed Judge Price to review all of the subpoenaed documents over which Petitioners asserted privilege.

only to sets of documents that Plaintiffs' counsel selected; (2) Petitioners did not receive a copy of Mr. Vaux's production prior to or during the hearing; and (3) Mr. Vaux's production itself was not Bates-numbered and did not correspond with the privilege log, Judge Price allowed Petitioners to file a supplemental *ex parte* memorandum after obtaining the documents directly from Mr. Vaux. Counsel for Petitioners thereafter contacted Mr. Vaux to request electronic copies of the five compilations of documents Plaintiffs' counsel selected. Mr. Vaux subsequently provided six (not five) sets of documents to counsel for Petitioners on February 21, 2023.[14]

One portion of the documents produced by Mr. Vaux, totaling twenty-five (25) pages, is especially concerning, because these pages were ***not*** in the Laurens Group Files provided by Ms. Senn to Petitioners, but instead appear to come from the Inquiry Agency Files, because they are investigatory reports authored and compiled by Ms. Capelli. Not until Petitioners were able to make a more comprehensive review of this compilation following the February 16, 2023 *in camera* hearing were Petitioners aware that Plaintiffs' counsel possessed some or all of the Inquiry Agency Files. These documents were not produced by Plaintiffs' counsel to Judge Price or to counsel for Petitioners. At this juncture, it is unclear how Plaintiffs' counsel obtained these particular documents. Moreover, the documents submitted by Plaintiffs' counsel include handwriting on them, whereas the ones provided by Ms. Capelli's legal counsel to Petitioners and subsequently provided to Judge Price do not contain this handwriting.

On March 24, 2023, Petitioners submitted their *in camera*, *ex parte* Supplemental Brief

[14] At the February 16, 2023 hearing, counsel for Petitioners implicitly argued all documents contained within the privilege log were privileged and explicitly argued for the privilege of the Inquiry Agency Files. Further, in Petitioners' March 24, 2023 Supplemental Brief, which was submitted *in camera* and *ex parte*, Petitioners expressly continued to assert Judge Price was required to rule on each document or categories of documents in the Laurens Group Files and Inquiry Agency Files and stated that they did not waive any assertions of privilege over any other documents for which it has previously asserted privilege, but which were not selected by Plaintiffs' counsel via their six subsets of documents.

regarding Judge Price's privilege review, which focused on the six sets of documents submitted by Mr. Vaux, but which also noted Petitioners were not waiving their prior assertions of privilege over any other documents not selected by Plaintiffs' counsel. Indeed, in that *in camera*, *ex parte* Supplemental Brief, Petitioners specifically requested Judge Price to address the issue of the remaining documents not contained within Plaintiffs' counsel's six sets of documents by upholding Petitioners' assertions of privilege over these documents. As of the date of this filing, Judge Price has never addressed these remaining documents.

On May 24, 2023, Judge Price issued an Order in response to the Supreme Court's direction to "make a final determination, with specific findings as to each document" over which Petitioners asserted privilege. However, as noted above, Judge Price's Order addressed ***only*** the documents self-selected by Plaintiffs' counsel. Judge Price failed to address the remaining documents over which Petitioners had asserted privilege (and continue to assert privilege). Petitioners filed a Motion to Reconsider in Part on June 2, 2023, raising two grounds: (1) Judge Price erred by failing to rule on all of the documents contained within Petitioners' privilege log; and (2) Judge Price erred in finding a number of documents were not privileged.[15] Additionally, Judge Price erred in issuing an inconsistent ruling in which scores of pages were held not to be privileged, while duplicates or substantially similar pages were held to be privileged. This inconsistency is highlighted in more detail in the Argument section below.

Without a hearing, Judge Price denied Petitioners' Motion to Reconsider in Part on June 8, 2023. Notably, Plaintiffs also filed a Motion to Reconsider, on June 5, 2023.[16] On June 12, 2023,

[15] Petitioners filed a redacted version of their Motion to Reconsider in Part on the public docket and simultaneously submitted a non-redacted version of it *ex parte* to Judge Price.

[16] On May 25, 2023, Plaintiffs' counsel informed Judge Price in an e-mail that they intended to file a Motion to Reconsider. In response, Petitioners notified Plaintiffs' counsel and Judge Price via e-mail the same day of the need to protect discussion of privileged material being submitted on the public docket. Thereafter, on May 31, 2023, Petitioners filed a notice explaining how it

Petitioners filed their Memorandum in Opposition to the Plaintiffs' Motion to Reconsider. Judge Price has yet to rule on Plaintiffs' Motion to Reconsider. However, during the telephonic status conference of June 14, 2023, Judge Price indicated his intention to conduct a hearing on the Plaintiffs' Motion to Reconsider. When Petitioners' counsel raised concerns about this apparent disparate treatment, Judge Price responded that his decision to summarily reject Petitioners' Motion for Reconsideration while giving Plaintiffs a hearing was an act of "judicial discretion." (Exhibit B, Hearing Transcript of June 14, 2023, p. 8, ll. 13–21.) Additionally, not only within the Plaintiffs' Motion to Reconsider, but also during that telephonic status conference, Mr. Tinsley repeatedly referenced documents that Judge Price correctly found privileged—and of which Mr. Tinsley should never have obtained or reviewed or maintained possession.

Unfortunately, this was not the first time Mr. Tinsley had referenced privileged material in a public manner. Mr. Tinsley, in an e-mail dated November 30, 2022, provided separate screenshots of a portion of an investigatory report, both of which were found to be privileged by Judge Price in his May 24, 2023 Order. Further, the e-mail included a screenshot of surveillance video taken by Ms. Capelli.[17] Similarly, in an e-mail sent on May 25, 2023, Mr. Tinsley discussed an investigatory report found to be privileged by Judge Price, which was sent to him and counsel for all parties, including counsel for other defendants, who should not have possession of any such material. To date, Judge Price has not provided any instruction or warning to Mr. Tinsley regarding his cavalier use of documents deemed privileged, nor has he instructed him to return privileged documents in his possession in accordance with this Court's Order.

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intended to submit a redacted Motion to Reconsider in Part on the public docket and an un-redacted version submitted *ex parte* directly to Judge Price. In that same notice, Petitioners requested Plaintiffs' counsel do the same. Judge Price never instructed the parties on how to file their reconsideration motions, and Plaintiffs only submitted one un-redacted version of their motion on the public docket, in which a discussion of privileged material occurs.

[17] Judge Price never made a privilege determination as to this specific video.

### D. ***Second Petition to this Court***

Because Judge Price denied Petitioners' Motion to Reconsider, Petitioners were left with no choice but to seek relief from this Court a second time. Petitioners filed their Petition to Enforce this Court's October 5, 2022 Order Granting a Writ of Mandamus, or, in the Alternative, Notice of Appeal, which was noticed to this Court, Judge Price, and all counsel of record on June 13, 2023. While this Court denied the Petition itself, the Court ruled on June 27, 2023, that all documents listed in Petitioners' privilege logs, which Judge Price had failed to review and rule on in the almost eight months-long period since this Court's October 2, 2022 Order, were deemed privileged by the Court. Additionally, this Court directed Plaintiffs "to comply with the provisions of Rule 26(b)(5)(B), SCRCP, which requires information subject to a privilege to be promptly returned, sequestered, or destroyed," and held that Plaintiffs

> shall not retain any copies or summaries of the information found by Judge Price to be privileged or any information not reviewed by Judge Price, may not use or disclose any of this information in any manner, and must take reasonable steps to retrieve any of this information disclosed prior to the date of this order.

(Exhibit C, Supreme Court Order of June 27, 2023, p. 2.) To date, Plaintiffs' counsel have not returned documents to Petitioners, nor have Plaintiffs' counsel certified compliance with this Court's directive. Case law from other jurisdictions establishes certification is required. *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").

Prior to this Court's Order, but following Judge Price finding certain documents within Plaintiffs' counsel's possession were privileged, Petitioners cited this case law in their Motion to Reconsider in a request for Judge Price to instruct Plaintiffs' counsel to verify the return and/or destruction of the privileged documents. Rather than instructing Plaintiffs' counsel in this manner, Judge Price perfunctorily denied Petitioners' Motion to Reconsider without a hearing. And after this Court's Order of June 27, 2023, Petitioners again noted to Judge Price in their Motion for Sequencing, filed on October 4, 2023, that Plaintiffs' counsel have not returned the privileged documents nor have they certified compliance with this Court's directives. Thus, to date, Petitioners are unaware whether Plaintiffs' counsel have complied with this Court's directive and Judge Price has not required Plaintiffs' counsel to so certify compliance. Lastly, on August 25, 2023, after Plaintiffs sought costs, arguing they had prevailed on the second Petition, this Court summarily denied that motion made pursuant to Rule 222 of the South Carolina Appellate Court Rules.

**E.** ***Professor Crystal's Report***

Petitioners have retained Professor Crystal as an expert witness in this case in support of Petitioners Mr. D'Cruz and Mr. Greco's Motion to Dismiss. He is also expected to testify concerning Petitioners' Motion to Disqualify Plaintiffs' counsel at an upcoming hearing. Plaintiffs' counsel's review and continued improper possession of privileged documents, a possession that was aided and abetted (intentionally or not) by Judge Price, will be the focus of Petitioners' Supplemental Motion to Disqualify.

Notably, Judge Price has previously been involved in two cases involving Professor

Crystal: *Luzak v. Light et al.*, Case No. 2016-CP-07-1919 and *Luzak v. Barringer*, Case Nos. 2019-CP-07-01253 and 2019-CP-07-01294. In those cases, Professor Crystal executed an affidavit as an expert witness and opined as to Judge Price's necessary disqualification based on a disconcerting letter Judge Price wrote to the parties characterizing one of the party's "appalling" behavior and "disdain" for the judicial system, among other issues. Judge Price's conduct in those cases was the subject of testimony before the JMSC.

**F. *Judge Price Found Unqualified by JMSC***

After conducting a hearing and receiving testimony on November 14, 2023, the JMSC declined on November 28, 2023 to find Judge Price qualified and did not nominate him for re-election by the General Assembly. According to reports, one of the issues reviewed by the JMSC screening process involved Judge Price's conduct in the two cases referenced earlier involving Professor Crystal, who had opined as an expert that Judge Price should be disqualified from those cases; (2) his preferential treatment for certain counsel; and (3) his overall competence as a judge. *See* Ema Rose Schumer, *Embattled Charleston judge defends his record in effort to stay on SC bench*, Post & Courier (Nov. 15, 2023), *available at* https://www.postandcourier.com/news/embattled-charleston-judge-defends-his-record-in-effort-to-stay-on-sc-bench/article_752fab1a-80fc-11ee-9dec-4bd26afcb623.html. Following the JMSC vote, Judge Price withdrew from further consideration for re-election.

**G. *Petitioners' Request for Judge Price's Withdrawal***

Following the South Carolina Bar Judicial Qualification Committee deeming Judge Price unqualified and days before the JMSC was set to vote, Plaintiffs' counsel e-mailed Judge Price's law clerk and administrative assistant on November 21, 2023, requesting all pending motions in the case be heard. On December 15, 2023, Judge Price's administrative assistant notified all

counsel she was working on scheduling a hearing the week of January 22, 2024. On December 21, 2023, Petitioners submitted a written request via e-mail to Judge Price requesting his withdrawal from the underlying action, a copy of which is attached hereto as **Exhibit D**. On December 23, 2023, the co-defendants, Max Fratoddi, Henry Rosado, and Private Investigation Services Group, LLC, submitted a similar written request via e-mail to Judge Price, also arguing for his withdrawal from this action, a copy of which is attached hereto as **Exhibit E**. On December 27, 2023, Plaintiffs' counsel submitted a written response via e-mail arguing against Judge Price's withdrawal, a copy of which is attached hereto as **Exhibit F**. On the morning of January 3, 2024, Judge Price's administrative assistant sent an e-mail asking all counsel to confirm if they were available on January 24, 2024 for a hearing. Given this clear indication that Judge Price did not intend to withdraw, Petitioners submitted a reply to Plaintiffs' counsel's response later that same day, outlining more specifically the arguments for Judge Price's disqualification, a copy of which is attached as **Exhibit G**. Judge Price has not responded to the requests that he withdraw—instead, on January 11, 2024, his administrative assistant sent an e-mail indicating that Judge Price was adding this case to his calendar for a hearing on January 24, 2024. Petitioners are filing a Motion to Stay the January 24, 2024 hearing simultaneously with Judge Price while this Court considers the Petition. However, given the above, Petitioners do not expect it to be granted. Therefore, Petitioners also seek an Order of this Court staying the matter in the Circuit Court until this Court acts on this Petition.

## LEGAL STANDARD

### A. *Authority to Issue Writs of Prohibition*

The Supreme Court may issue writs of prohibition in its original jurisdiction. S.C. Const. art. V, § 5. A party may seek issuance of an extraordinary writ in the original jurisdiction of the

Court by petition. Rule 245(b), SCACR.

"The ancient prerogative writ of prohibition has been recognized and employed in the common-law system of jurisprudence for more than seven centuries, and like all prerogative writs should be used with forbearance and caution, and only in cases of necessity." *Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931). "It is primarily a preventive process, and is only incidentally remedial." *Id.* The writ "will be granted only to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure . . . ." *State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602, 603 (1938) (citation and internal quotation marks omitted). But the "writ may not be invoked to perform the office of an appeal." *Id.* "[I]f the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment . . . ." *Id.* If "the court in which the original action is brought has jurisdiction and the usual remedies provided by law are adequate and complete, the writ should not issue." *Woodworth v. Gallman*, 195 S.C. 157, 10 S.E.2d 316, 319 (1940) (citation and internal quotation marks omitted).

**B.** ***Authority on Disqualification***

Canon 1 of the South Carolina Code of Judicial Conduct states a judge shall uphold the integrity and independence of the judiciary, and Canon 2 states a judge shall avoid impropriety and the appearance of impropriety, such that public confidence is promoted in the integrity and impartiality of the judiciary. Rule 501, SCACR. "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Rule 501,

SCACR, cmt. to Canon 2(A). The current South Carolina standard for disqualification applies to all state court judges, without exception. Canon 3(E)(1) requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Rule 501, SCACR, Canon 3(E)(1).[18] Further, Canon 3(E)(1) holds that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer . . . ." Rule 501, SCACR, Canon 3(E)(1). Again, even the appearance of impropriety is sufficient to necessitate recusal.

The Supreme Court of the United States has held likewise in finding that the purpose of judicial disqualification "is to avoid even the ***appearance*** of partiality." *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988) (emphasis added) (quoting *Health Servs. Acquisition Corp. v. Liljeberg*, 796 F.2d 796, 802 (5th Cir. 1986)).[19] Thus, the "critical question" presented in these circumstances "is ***not*** whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, ***might reasonably question his impartiality*** on the basis ***of all the circumstances***." *See United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir. 1998) (emphasis added) (quoting *Hathcock v. Navistar Int'l Transp. Corp.*, 53 F.3d 36, 41 (4th Cir. 1995); *Aiken Cnty. v. BSP Div. of Envirotech Corp.*, 866 F.2d 661, 679 (4th Cir. 1989)). Importantly, a "confluence of facts [can] create a reason for questioning a judge's impartiality, even though none of those facts, in isolation, necessitates recusal." *See DeTemple*,

[18] A list of examples in which a judge's impartiality might reasonably be questioned is provided in Canon 3(E)(1); however, this list is expressly non-exhaustive.

[19] While the South Carolina Supreme Court "has not extensively treated the question of the legal sufficiency of facts necessary to warrant the disqualification of a judge, the federal courts have done so," and citation to federal law is instructive here. *Mallett v. Mallett*, 323 S.C. 141, 146, 473 S.E.2d 804, 808 (Ct. App. 1996); *see also Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.").

162 F.3d at 287. Ultimately, "[i]f it is a close case, the balance tips in ***favor*** of recusal." *Smith v. McMaster*, No. 3:15-CV-02177-JMC, 2015 WL 5178507, at *2 n.1 (D.S.C. Sept. 3, 2015) (emphasis added); *see also United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987)[20] ("[T]he benefit of the doubt is . . . to be resolved in ***favor*** of recusal." (emphasis added)).

### C. ***Authority to Issue a Stay***

South Carolina law not only allows, but weighs in favor of a stay in this case. Rule 62(g) of the South Carolina Rules of Civil Procedure allows for this Court "to stay proceedings during the pendency of an appeal" or "to make any order appropriate to preserve the status quo." Rule 62(g), SCRCP. Further, Rule 205 of the South Carolina Appellate Court Rules states "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal." Rule 205, SCACR. Likewise, Rule 241(a) of the South Carolina Appellate Court Rules holds that "[a]s a general rule, the service of a notice of appeal in a civil matter acts to ***automatically*** stay matters decided in the order, judgment, decree or decision on appeal . . . ." Rule 241(a), SCACR (emphasis added). As the Supreme Court's precedent in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532–34, 787 S.E.2d 485, 493–94 (2016), makes clear, these procedural rules divest the trial court of jurisdiction of the appeal and all matters affected by the appeal. *Id.* In this case, the disqualification of Judge Price impacts every motion. Thus, a hearing on all motions ***must*** be stayed until final resolution of this Petition.

## ARGUMENT

### A. ***Because Judge Price Concluded Assignment of the Case Should be to One Judge, the Upcoming Expiration of His Term Requires His Withdrawal or Removal Now.***

As a preliminary matter, as noted above, in the early stages of this litigation, Plaintiffs'

[20] *Superseded by statute on other grounds*, Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 29, *as recognized in Lussier v. Dugger*, 904 F.2d 661, 664 (11th Cir. 1990).

counsel requested the action be designated as "complex" and assigned exclusively to Judge Price while Judge Price was assigned as the Chief Judge for Common Pleas in the Fourteenth Judicial Circuit—an assignment position which Judge Price, who lives in Charleston County, no longer holds. Judge Price agreed, concluding this case would be well served to have one judge assigned from discovery through the end of trial. However, Judge Price has now withdrawn from reelection as a circuit court judge. Because Judge Price will leave the bench in less than six months, he should have withdrawn from this case that he deemed complex so that it may be reassigned. Thus, from a policy perspective and for consistency's sake, Judge Price's withdrawal from the case would be in accordance with his stated original intent for this case and would support the ends of justice for all parties.

This Court should also be aware that despite the fact that Judge Price has been presiding over this case for almost two years, very little has actually happened in this matter so far, meaning the appointment of a new judge will ensure the same judge presides over the important motions pending. Petitioners have yet to file an answer, as their Motions to Dismiss have been pending for almost two years with no response from Plaintiffs; neither has there been any hearing or ruling by Judge Price on these Motions to Dismiss. Moreover, there has been almost no discovery taken in this case and almost no movement on motions. The following table demonstrates the length of time the motions have been pending:

| **Motion** | **Date Filed** |
|---|---|
| 1. Private Investigator Defendants' Motion to Dismiss | January 13, 2022 |
| 2. Petitioners Mr. D'Cruz and Mr. Greco's Motion to Dismiss | March 9, 2022 |

| | |
|---|---|
| 3. Petitioners Mr. Parker and Parker's Corporation's Motion to Dismiss | March 9, 2022 |
| 4. Petitioners' Motion to Compel Discovery from Plaintiffs' Counsel (*first one*) | June 15, 2022 |
| 5. Private Investigator Defendants' Motion for Summary Judgment | August 25, 2022 |
| 6. Petitioners' Motion to Disqualify Mark Tinsley | September 27, 2022 |
| 7. Petitioners' Motion to Stay Discovery Not Related to the Disqualification of Mark Tinsley | November 7, 2022 |
| 8. Petitioners' Motion to Compel Discovery from Plaintiffs' Counsel (*second one*) | March 31, 2023 |
| 9. Petitioners' Motion to Compel Discovery from Plaintiffs' Counsel (*third one*)[21] | May 31, 2023 |
| 10. Petitioners' Motion to Extend the ADR Deadline | May 31, 2023 |

[21] The subpoenas at issue within this Motion to Compel request counsel for Plaintiffs to produce all documents obtained from agents of Petitioners. As set forth more fully in other filings, counsel for Plaintiffs apparently have obtained twenty-five pages of documents with handwriting on them, which appear to be from the Inquiry Agency Files that were never produced to Petitioners. Therefore, discovery of what documents counsel for Plaintiffs have is critical in order for Petitioners to review and assert privilege if necessary. Additionally, this discovery would provide additional insight into whether counsel for Plaintiffs have committed additional disqualifying conduct.

| | |
|---|---|
| 11. Petitioners' Supplemental Motion to Disqualify Plaintiffs' Counsel[22] | June 5, 2023 |
| 12. Plaintiffs' Motion to Reconsider | June 5, 2023 |
| 13. Petitioners' Motion for Sequencing and Order of Precedence on Motions | October 4, 2023 |

Months (and, indeed, years) have elapsed since the filing of these motions—and Judge Price has failed to indicate why he now believes these motions to be pressing and require a hearing within the next several weeks. In addition, it must be noted that Judge Price commented on the record during an early hearing on May 9, 2022, that he "trust[ed]" Mr. Tinsley, and thus allowed Plaintiffs to retain privileged documents prior to and after this Court's ruling on the Petition for Writ of Mandamus. (Exhibit A, Hearing Transcript of May 9, 2022, p. 11, l. 16 – p. 12, l. 5.) Further, Judge Price has yet to require Plaintiffs' counsel to return, sequester, or destroy privileged documents as required by this Court's October 2, 2023 Order. Indeed, the record as a whole raises serious questions as to Judge Price's potential hostility to Petitioners and his evident preferential treatment towards Plaintiffs' counsel.

**B.** ***A Number of Substantive Grounds Warrant Disqualification.***

There are other substantive grounds as well that support disqualification and warrant the issuance of a writ prohibiting Judge Price from sitting in judgment in the underlying action. A confluence of facts and factors leads to the conclusion that one might reasonably question Judge Price's impartiality in this case and place a reasonably prudent person in fear of not having their

[22] Professor Crystal submitted affidavits in support of Petitioners' Motions to Disqualify and will testify at any hearing on those motions.

case heard by a fair and impartial judge. Prohibition from his continued assignment is necessitated in this case for several reasons.

First, as set forth in detail in the factual recitation above, reports following the JMSC hearing suggested concerns for Judge Price's "quick and/or erratic mood swings," his competence as a jurist, and his preferential treatment for certain counsel. It must be noted that among the few actual rulings made by Judge Price in this case to date, significant and undisputed legal errors have been committed by him—and all such rulings were made against Petitioners. Judge Price's legal errors to date have required this Court's intervention and correction not once, but twice. As noted above, this Court granted the relief Petitioners sought by instructing Judge Price to conduct a proper privilege review and determination. In the second instance, after Judge Price failed to conduct a timely and complete privilege review as directed by this Court, as he only reviewed and made rulings on the documents self-selected by Plaintiffs' counsel, this Court then deemed all documents that Judge Price did not review as privileged. Such corrections by direct petition to this Court are extremely rare, which is recognized by this Court's precedent: "Our willingness to review a discovery order by way of a writ of certiorari will be ***as rare as the proverbial 'hen's tooth.'*** We have no desire to micromanage discovery orders." *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010) (emphasis added).[23] The parties and the public have clear grounds to be concerned with not only Judge Price's capabilities to handle a matter such as this one and with his clearly erroneous legal rulings, but also his lack of impartiality towards Petitioners, who have so far been twice compelled to seek correction of his erroneous legal rulings and who are now unfortunately required to return to this Court again to prevent a manifest injustice if Judge Price remains on this case.

[23] Even Plaintiffs' counsel recognizes this rarity as well, as they have cited to this declaration by this Court in their own briefings in this case.

Similarly, Judge Price has made a number of internally inconsistent rulings. Not only did he issue inconsistent rulings on whether and how he would be conducting the privilege review and determination, which culminated in him declining to conduct such a review until directed to by this Court, but he also made internally inconsistent rulings in his May 24, 2023 Order. On page 11 of that Order, after setting forth several discreet pages within the Murdaugh Report that were deemed privileged, Judge Price held the remainder of **LAURENSGROUP_004737 – 005019** ("**First Set**") were not privileged. However, on page 15 of the Order, Judge Price found **LAURENSGROUP_004474 – 004576** ("**Second Set**") were privileged. Scores of pages within both sets are the same or substantially similar, resulting in an inconsistent ruling. The chart below outlines the duplication.

| **Documents Within the *First* Set Held *Not* to Be Privileged** | **Documents Within the *Second* Set Held to Be Privileged** |
|---|---|
| 004753 – 004793 | 004489 – 004528 |
| 004795 – 004825 | 004430 – 004558 |
| 004827 – 004831 | 004559 – 004563 |
| 004833 – 004836 | 004565 – 004568 |
| 004838 – 004845 | 004569 – 004576 |

Because of the inconsistency in the application of privilege for duplicative documents, there remain issues with the record requiring correction.

Sometimes mistakes happen, which is why the South Carolina Rules of Civil Procedure allow for reconsideration and the Supreme Court finds value in "the propriety" of motions to correct mistakes. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); *see also id.* at 21, 602 S.E.2d at 780 ("A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or

issue, and the party wishes for the court to reconsider or rule on it."). However, when presented with this clear inconsistency in Petitioners' Motion to Alter or Amend filed on June 5, 2023, Judge Price perfunctorily denied the motion without a hearing three days later on June 8, 2023. This decision stands in stark contrast to Judge Price's willingness to conduct a hearing on Plaintiffs' counsel's Motion for Reconsideration. Among other actions, Judge Price's willingness to conduct a hearing on Plaintiffs' counsel's Motion for Reconsideration while summarily denying the same for Petitioners heightens the concerns expressed about his preferential treatment for certain counsel. Thus, the parties and the public should reasonably be concerned with not only Judge Price's lack of understanding of the important issues at stake, but also his lack of impartiality towards the parties who were denied an ability to be fully heard and to assist the Court in correcting his inconsistencies.

This case is also a high profile one, which continues to garner press attention and significant public interest, meaning the outcome of this case is one in which not only the parties, but the public at large, will be concerned. The needs for a fair and impartial tribunal in this case and for the public confidence that a fair and impartial tribunal exists are of the utmost importance. A judge shall uphold the integrity and independence of the judiciary and a judge shall avoid even the appearance of impropriety. Rule 501, SCACR, Canons 1 & 2. These goals are best served by Judge Price's disqualification here.

Moreover, prior to Judge Price assigning this case to himself, Petitioners retained Professor Crystal as an expert witness in this case. As set forth above, Professor Crystal is expected to testify in support of Mr. D'Cruz and Mr. Greco's Motion to Dismiss, but also in support of the disqualification of Plaintiffs' counsel. Judge Price's previous handling of the *Luzak* cases, where Professor Crystal executed an affidavit as an expert witness that Judge Price should have

disqualified himself in those case, prevents Judge Price from impartially considering Professor Crystal's testimony here—particularly in light of the fact that the JMSC received testimony about Judge Price's conduct in those cases. Indeed, in those cases, Judge Price declined to disqualify himself after motions were filed requesting him to do so based in part on Professor Crystal's affidavit—however, he did ultimately reassign the cases. Because Professor Crystal previously argued for Judge Price's disqualification in the *Luzak* cases, there are reasonable questions as to Judge Price's ability to impartially assess Professor Crystal's opinions and testimony in the underlying action, particularly since that testimony relates specifically to a disqualification issue. As set forth earlier, Petitioners first filed a Motion to Disqualify Mr. Tinsley and then a Supplemental Motion to Disqualify both Mr. Tinsley and Mr. Vaux, on the following grounds: (1) Mr. Tinsley's contravention of the advocate-witness rule; (2) Mr. Tinsley's improper communication with a represented third party (i.e. a violation of the no-contact rule); (3) Mr. Tinsley and Mr. Vaux's improper receipt and review of privileged documents; and (4) Mr. Tinsley's improper disclosure of privileged information and material to persons not authorized to possess them. There is no way Judge Price can impartially rule on the pending disqualification motions, given Judge Price's flip-flop April 2022 rulings which set the stage for Mr. Tinsley's acquisition of privileged documents in the first instance, his then clearly erroneous handling of the privilege issue throughout, and his subsequent failure to require the return of documents that Judge Price himself found to be privileged as well as a trove of documents that this Court has now deemed to be privileged based on his errors.

### C. ***Resort to this Court is Required.***

This Court might question why Petitioners have not first sought the intervention of the current Chief Administrative Judge for the Court of Common Pleas in the Fourteenth Circuit.

Petitioners considered that option; however, this case arises out of the Related Civil Action, the aftermath of which ultimately led to criminal investigation and prosecutions of Alexander Murdaugh. Petitioners are aware that both of the current Chief Administrative Judges in the Fourteenth Circuit have recused themselves in all matters related or connected to Alexander Murdaugh, leaving Petitioners with only one option: to seek relief from this Court. Pursuant to this Court's Order of June 29, 2019, when both chief judges for administrative purposes have conflicts in a matter or proceeding, then "the matter of proceeding shall be referred to the Chief Justice for assignment to the chief administrative judge of an adjoining circuit."

Further, Rule 27(e) of the Rules for Judicial Disciplinary Enforcement states only this Court can determine that a judge has violated the Code of Judicial Conduct. Rule 502, SCACR. However, rather than arguing for any disciplinary sanction for failing to withdraw from this case, Petitioners here seek either a reassignment of this case at this Court's direction in the interests of justice, or alternately, a finding that Judge Price has not avoided the appearance of impropriety in this action, such that his disqualification is necessary. Only this Court can take such action—and given Judge Price's failure to withdraw, Petitioners cannot vindicate their right to have this case presided over by an impartial judge by any means other than this Court's intervention.

## CONCLUSION

For the reasons set forth above, Judge Price should be prohibited from presiding over this action. At minimum, the confluence of events that have transpired alongside the important factors present in this case lead to the conclusion that disqualification is necessary. Even the appearance of impropriety must be scrupulously avoided, and, at minimum, that threshold has been established here. It will not serve the ends of justice for Judge Price to rule now in this complex litigation on multiple motions that have been pending for well over a year during his last few months on the

bench. Based on the record to date, Petitioners have every reason to believe that their motions and arguments will not receive fair and impartial consideration.

Based on the foregoing, Petitioners respectfully request that this Court stay all matters pending in the Circuit Court until the Court acts on this Petition for a Writ of Prohibition—and Petitioners further request that this Court grant the Petition.

Respectfully submitted,

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January 16, 2024
Columbia, South Carolina