Renee S. Beach, et al. v. Gregory M. Parker, et al.
Case No. 2021-CP-25-00392
THE PARKER'S DEFENDANTS' MOTION TO DISQUALIFY ATTORNEY MARK TINSLEY

EXHIBIT K

PROFESSOR CRYSTAL AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

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,
JASON D'CRUZ, VICKY WARD,
MAX FRATODDI, HENRY ROSADO,
AND PRIVATE INVESTIGATION
SERVICES GROUP, LLC,

              Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No. 2021-CP-25-00392

**Expert Affidavit in Support of
Defendants' Motion to Compel**

The undersigned, Nathan M. Crystal, provides the following expert affidavit under oath:

I. Material Reviewed and Factual Basis of Opinion

I reviewed the production by Sara Capelli, a private investigator, of material, mainly text messages, between Mark Tinsley, attorney for the plaintiffs in this matter, and Ms. Capelli. I also reviewed the defendants' Supplemental Brief in Support of their Motion to compel the production of subpoenaed material and the material attached as Exhibit A to the defendants' supplemental brief.

I understand that Mr. Tinsley initially subpoenaed Ms. Capelli, a third party, as part of his effort to obtain information to support a civil action that he had brought on behalf of the Estate of Mallory Beach because of the death of Mallory Beach in boating accident in 2019. Paul Murdaugh was the driver of the boat and a defendant in that action. Parker's Corporation, which is a defendant in that action as well as in the current proceeding, hired Ms. Capelli to investigate the conduct of Paul Murdaugh in connection with its defense in the action arising from the boat accident.

I also understand that for the majority of the time period covered by this produced material and pertinent to this opinion, Ms. Capelli was represented by counsel, Cheryl D. Shoun, of the Nexsen Pruet firm.

In my opinion, which I hold to a reasonable degree of professional certainty, Mr. Tinsley intentionally violated the Rules of Professional Conduct in the following ways.

1.   **Mr. Tinsley communicated with a person who he knew was represented by counsel without the consent of that counsel in violation of SCRPC 4.2.**

Rule 4.2 of the South Carolina Rules of Professional Conduct imposes an absolute prohibition against a lawyer having any form of communication with a person who the lawyer knows is represented by counsel in the matter unless authorized by law or court order.

In this matter Mr. Tinsley initiated and engaged in communications by text trying to arrange a personal meeting with Ms. Capelli even though Mr. Tinsley knew that Ms. Capelli was represented by Ms. Shoun and there was no law or court order authorizing such contacts. Mr. Tinsley texted Ms. Capelli as follows:

> Mark Tinsley - Feb 27, 2022 at 5:33 PM - iMessage
> Sure I'll meet you. Send me a copy of the email firing Cheryl and tell me where.
> (Capelli Bates #001071).

Rule 4.2 is not a technical requirement but a fundamental aspect of the functioning of the legal system and the protection of the rights of persons who are represented by counsel. Comment 1 to that rule states:

> This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client lawyer relationship and the uncounseled disclosure of information relating to the representation.

2.   **Mr. Tinsley gave Ms. Capelli legal advice that he did not think she needed counsel in violation of either Rule 4.2 or 4.3.**

Mr. Tinsley texted Ms. Capelli as follows:

> Mark Tinsley - Feb 27, 2022 at 5:37 PM - iMessage
> Let's meet. If you think you need counsel after then fine. I honestly don't think
> you do. (Capelli Bates #001071).

As stated above, this text violated the anti-communication rule 4.2. In addition, even if Mr. Tinsley thought that Ms. Capelli would be firing Ms. Shoun and thought that she therefore would become unrepresented, he still could not ethically give legal advice to her because Rule 4.3 prohibits a lawyer from giving legal advice to an unrepresented person other than the advice to obtain counsel.

3.   Mr. Tinsley demanded that Ms. Capelli fire her counsel and provide written documentation of that fact, in violation of Rule 4.4, which provides as follows:

<p style="text-align:center">Rule 4.4 Respect for the Rights of Third Persons</p>

(a) <u>In representing a client</u>, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or <u>use methods of obtaining evidence that violate the legal rights of such a person.</u> (emphasis added).

Ms. Capelli has the right to the counsel of her choice, and the right to have advice of that counsel with regard to her legal situation. This was not a trivial right because, as shown in the text, Ms. Capelli was very concerned about her license and reputation as a private investigator:

> You' - Mar 3, 2022 at 1:33 AM - iMessage
> I shouldn't be texting you this late. I am so angry and I hate being backed into corners. Just make it stop. <u>I can't just hand over evidence. I would be ruined as a PI.</u> (emphasis added). (Capelli Bates #1065).

> You - Mar 3, 2022 at 1:23 AM - iMessage
> Oh and this gets even better. I am a contributing member to SCALI and NCISS (both of which have placed my being on the board on hold) and I write for PI Magazine [sic]. <u>They are all in jeopardy. You are forcing me to not work and have to move back to my home state.</u> (emphasis added). (Capelli Bates #1065).

While Mr. Tinsley denied that he was forcing Ms. Capelli to do anything, rather than recognizing and supporting her right to legal representation, he pressured her to fire her counsel and prevent Ms. Capelli from obtaining legal advice:

> Mark Tinsley - Feb 28, 2022 at 11:08 AM - iMessage
> 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 (Capelli Bates #001071).

4.   Mr. Tinsley engaged in misrepresentation to Ms. Capelli in violation of Rule 4.1 and 8.4(c).

Tinsley told Ms. Capelli that he would protect her from Parker's:

> Mark Tinsley - Feb 26, 2022 at 1:22 PM - iMessage
> Come Monday we definitely can. <u>I won't let Parker do anything to you.</u> (Capelli Bates #001073 emphasis added).

' I understand from the context of the materials in Exhibit A, texts by "You" are Ms. Capelli's texts.

Mr. Tinsley had no reasonable basis for making this representation. He could not represent Ms. Capelli in defending or bringing any action against Parker's because of multiple conflicts of interest, and even if he could represent Ms. Capelli, he has no ability to protect Ms. Capelli from actions taken by Parker's, particularly in the event Ms. Capelli had breached any fiduciary duty or engaged in other wrongful conduct.[2]

  5. **Mr. Tinsley's communications with Ms. Capelli show a blatant and intentional disregard for the ethics rules:**

> You - Feb 28, 2022 at 7:21 PM - iMessage
> Plus, you did communicate to me while still with counsel 🎯 🖤

> . . .

> Mark Tinsley - Feb 28, 2022 at 7:22 PM - iMessage
> Ha. Trust me <u>I'm not worried about my communications.</u> (emphasis added).

As such, Mr. Tinsley's actions amount to misconduct under SCACR 8.4(a) (violation of the Rules of Professional Conduct) and 8.4(e) (conduct prejudicial to the administration of justice).
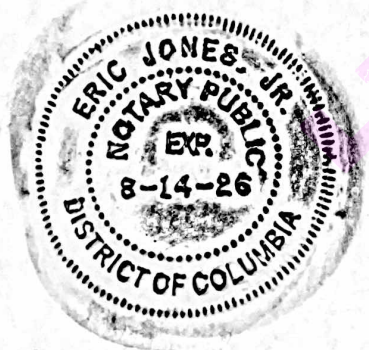
  Further the affiant sayeth not.

              _____
              Nathan M. Crystal

Notarization District of Columbia

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[2] Based on Ms. Capelli's texts, she maintains she did not engage in any wrongful conduct with respect to the Parker's defendants.