STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
JENNIFER SPIVEY FOLEY, as Personal Representative of the Estate of SCOTT RYAN SPIVEY, Plaintiff,	)	CASE NO.: 2024-CP-26-03798
v.	)	**PLAINTIFF JENNIFER SPIVEY FOLEY'S MEMORANDUM IN OPPOSITION TO DEFENDANT CHARLES WELDON BOYD'S MOTION FOR RECUSAL**
CHARLES WELDON BOYD and KENNETH WILLIAMS, Defendants.	)	

Plaintiff Jennifer Spivey Foley, as Personal Representative of the Estate of Scott Ryan Spivey, files the following response to the Motion Seeking Recusal of Judge Eugene C. Griffith, Jr., filed by Defendant Charles Weldon Boyd. The Motion is grounded in falsehoods, speculation, and innuendo and should be denied.

First and foremost, a judge has a duty to rule grounded in Canon 3.B.(1), CJC, Rule 501, SCACR. That primary duty may be overcome only by evidence of something that would require disqualification as set forth in Canon 3.E. This means where "the judge's impartiality might *reasonably* be questioned." Canon 3.E. (emphasis added). Examples include "instances where…the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding." Canon 3.E.(1)(a).

The crux of Boyd's assault on the Court is his specious claims that this Court, along with counsel for Plaintiff and counsel for Defendant Williams, engaged in an attempt to suborn perjury by Defendant Williams. These allegations are patently false, and such falsehoods can never serve as a basis to question a judge's impartiality.

Boyd further contends that the Court violated Rule 605, SCACR, in its handling of media coverage and these alleged violations evidence this Court's "cavalier" attitude towards the duty of oversight of media coverage. The Court should ignore these late-in-the-day complaints.

I. Alleged Subornation of Perjury

Defendant Boyd has made baseless, wild, false and misinformed accusations against Plaintiff's counsel, counsel for Defendant Williams, and this Court. The narrative Defendant recites in his Motion could be summarily brushed aside if the allegations were not so serious. They are without factual foundation, but that has not stopped Defendant Boyd and his counsel from filing those allegations in the public record.

No one asked, or even suggested, that Mr. Williams "testify falsely in this proceeding" or asked him to "fabricat[e] testimony." Boyd's Counsel's account of those conversations is false – he claims it is based upon his recalling conversations that took place, but no such offers were ever made – and he knows it. Those recitations demonstrate a lack of candor and amount to false statements to the tribunal.

As the Court knows, a discussion did, in fact, take place during a break in the hearing. Plaintiff's counsel and counsel for Williams spoke during the proceedings and Plaintiff's counsel advised Williams' counsel that if Williams would *testify truthfully and completely,* Plaintiff would withdraw her opposition to Williams' motion for immunity. There were never any guarantees given, and Boyd's counsel was present and knows this. Williams still bore the burden of testifying truthfully and proving his case, and in the end the Court may have still determined he failed to meet that burden. Williams rejected the offer and, as ultimately found by the Court, failed to testify truthfully under oath.

Boyd's counsel claims he possesses an affidavit to support these allegations, but he has refused repeated requests to share it with counsel for Plaintiff, nor did he file it as required by Rule 6(d), SCRCP ("When a motion is to be supported by affidavit, the affidavit *shall* be served with the motion….")(emphasis added), even if under seal pursuant to Rule 41.1, SCRCP. He also has not offered any reason for withholding the spurious affidavit in violation of the Rules. Of course, unless the affidavit is from an actual participant in the conversations, it is hearsay and speculation, and not competent evidence of anything. Until this mysterious affidavit is produced and subject to scrutiny and cross-examination under oath, it cannot serve as a basis for the relief Boyd seeks.

Boyd contends he is "justifiably persuaded that Judge Griffith cannot be fair and impartial to Boyd" and seeks recusal under Canon 3.E.(1), CJC, Rule 501, SCACR.[1] This claim is preposterous. Canon 3.E.(1) requires a judge to disqualify himself in a proceeding in which the judge's impartiality might *reasonably* be questioned. *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014). It is not reasonable to question a judge's ethics based upon unsupported allegations and falsehoods. *Compare State v. Watkins*, 406 S.C. 360, 752 S.E.2d 261 (2013) (finding no evidence of judicial bias under Canon 3.E.(1) where judge in criminal retrial had presided over defendant's prior PCR matter); *Roche v. Young Brothers, Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998) (rejecting an allegation that a special referee's impartiality might reasonably be

[1] Boyd cites to the Supreme Court's recent amendment to Canon 3 as support for his motion. That amendment, however, was simply to clarify the procedure for remittal of recusal under Canon 3.E., CJC. The Court became concerned because it had learned of instances where judges were aware of facts requiring self-recusal based on family connections with law enforcement or prosecution agencies and the judges were eager to seek remittal because of the judge's desire to hear the matter rather than a request from the parties. *Re: Amendments to Rule (sic) 3, Code of Judicial Conduct*, Rule 501, SCACR, Order (S.C. Sup. Ct. filed June 4, 2026) (Howard Adv. Sh. No. 22 at 29). That same order reminds judges of the duty to hear and decide matters assigned to the judge under Canon 3.B.(1) except where disqualification is required. That order, which clarifies disqualification due to family relationships and the remittal of recusal procedure, adds nothing relevant to this Motion to Recuse based upon false allegations and innuendo.

questioned under Canon 3.E.(1) because the special referee transmitted a letter on his private firm's stationery).

Boyd notes that he sought reconsideration of the Court's ruling, a signal that this Motion is rooted in his disappointment with the result of the hearing. However, a party cannot establish bias simply because the party has obtained an adverse ruling. *Butler v. Sea Pines Plantation Company*, 282 S.C. 113, 317 S.E.2d 464 (1984) (adverse rulings, even if erroneous, are insufficient to establish a trial judge's bias or prejudice; the record must clearly show prejudice, bias, capricious disbelief or prejudgment).

Boyd's groundless accusations do not amount to evidence sufficient to question the Court's impartiality, reasonably or otherwise, so as to require the Court to recuse, nor do they overcome this Court's duty to rule as set forth in Canon 3.B.(1). The Court should reject these assertions and deny the Motion. At the very least, the Court should hold a hearing so that Boyd and his counsel can present these allegations under oath and subject to cross-examination.

II. **Alleged "Ex Parte" Contact with the Press**

Boyd next asserts the Court committed some kind of improper "ex parte" meeting with media representatives. (Motion, p. 3). This argument reflects a misapplication of the term "ex parte" in this context. The Court should not be persuaded.

The term "ex parte" means a proceeding or contact "taken or granted at the instance of or for the benefit of one party only, and without notice to, or contestation by, any party adversely interested." *Ex parte Lexington County*, 314 S.C. 220, 225-226, 442 S.E.2d 589, 593 (1994). There is nothing about Rule 605 that involves the parties or the merits of the case. Meeting with media members in advance of a proceeding without any of the parties present is not prohibited, and certainly does not meet the definition of "ex parte" contact.

Even if the meeting with the media representatives met the definition of "ex parte" contact, nothing prevented it. There are no prohibitions of such in Rule 605. *Cf.* Canon 3.B.(7)(e) (a judge may initiate or consider any ex parte communications when expressly authorized by law to do so).

In fact, Rule 605 requires media representatives to give reasonable notice to the *judge*, not to the *parties*. Rule 605(f)(1)(ii), SCACR. There is no requirement that either media or the judge inform or get input from any of the participants in the case. There is also nothing that prevents the judge from doing precisely what the Court did in this case, which was to meet pretrial and organize media coverage in advance upon receiving several notices pursuant to Form 1.

The Court should reject Boyd's characterization of this Court's reasonable efforts to organize media coverage as "cavalier."

III. **Violation of Rule 605, SCACR**

Boyd also complains about numerous alleged violations of Rule 605 including (1) that more than two cameras were used in the courtroom (he claims there were 3) in violation of Rule 605(f)(3)(i); (2) not all of the media requests are reflected on Form 1 orders; (3) the positioning of the media members was not set forth in the orders; (4) no record was kept by the clerk of the identity of media representatives; and (5) no media person affirmed familiarity with published Bench-Bar-Press Guidelines. Boyd contends this further represents that the Court was "cavalier" in its oversight of media coverage. The Court should not take these specious allegations into consideration.

First, regarding the number of cameras and placement of media personnel, Boyd and his counsel were in court every day and nothing obstructed their ability to see them, and to note the number of cameras in the courtroom and the placement of media representatives. It was only after Boyd lost his Motion for Immunity that he raised a complaint – this comes way too late. *Cf. State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999) (noting "only after the jury returned with an unfavorable verdict did defense counsel attempt to raise" an issue under Rule 605, SCACR; Supreme Court held the appellant waived review of the issue by failing to object prior to the jury's verdict).

As for the lack of clerk records, Form 1 orders, or media personnel affirmations, none of those things affect the proceedings in this case or support reasonably questioning the Court's impartiality or lack of bias. The alleged failures to comply with Rule 605 simply renders a person subject to appropriate sanction, if any, within the Court's discretion. Rule 605(f)(6). Again, that was a matter that should have been taken up in the moment, not months after receiving an adverse ruling.

Although Boyd claims he did not know these things until he did a FOIA request, his counsel was aware of Rule 605 prior to the hearing, and if he or Boyd had a gripe, then prior to the commencement of the proceedings was the time to voice it. Boyd's failure to timely object constitutes a waiver of these complaints.

The Court should reject this belated and unsupported challenge and deny this Motion.

CONCLUSION

This Motion is based upon a false narrative advanced by a party who received an adverse ruling and now seeks to impugn the integrity of Plaintiff's counsel, Defendant Williams' counsel, and this Court. By this filing in the public record, Boyd has accused all three of misconduct and, in fact, criminal behavior. *See* S.C. Code Ann. § 16-9-20 (1993) (it is a misdemeanor for a person to suborn perjury in a civil action). He has done so without evidence and with the knowledge of his counsel that the accusations are false and with reckless disregard for the truth. It is defamatory at best, and unethical at worst. The Court should reject these claims and deny this Motion.

Respectfully submitted,

GOODING AND GOODING, P.A.

By: s/Mark B. Tinsley____________________
Mark B. Tinsley – S.C. Bar # 15597
Laine Brabham Gooding – S.C. Bar # 13542
Hugh Gordon Gooding – S.C. Bar # 107623
Gooding & Gooding, PA
P.O. Box 1000
Allendale, SC 29810
803-584-7676

-and-

Natasha M. Hanna – SC Bar #70198
Law Ofc. of Natasha M. Hanna, P.C.
4712 Jenn Dr., Suite A
Myrtle Beach, SC 29577

-and-

John S. Nichols – S.C. Bar # 4210
Bluestein Thompson Sullivan, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

Attorneys for Plaintiff

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