

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTHTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2024-CP-26-03798
JENNIFER SPIVEY FOLEY, as Personal	)	
Representative of the Estate of SCOTT	)	
RYAN SPIVEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S RESPONSE TO
	)	DEFENDANT BOYD'S NOTICE OF
CHARLES WELDON BOYD and	)	WITHDRAWAL FOR RECUSAL
KENNETH WILLIAMS,	)	-AND-
	)	MOTION FOR SANCTIONS/
Defendants.	)	RULE TO SHOW CAUSE
	)	

Plaintiff files this Response to Defendant Boyd's attempt to withdraw his Motion Seeking Recusal of Judge Eugene C. Griffith, Jr., and respectfully moves this Court for a hearing regarding the allegations contained therein and for a rule to show cause why the Court should not enter sanctions against Defendant Boyd and his counsel.

Plaintiff does not oppose withdrawal of the request that Judge Griffith recuse himself. Plaintiff does, however, oppose any effort by Defendant Boyd to avoid judicial scrutiny of the extraordinary and spurious allegations contained in the Motion while preserving the ability to reassert those same false allegations at a later date.

Defendant Boyd's Motion did not merely challenge a ruling of this Court. Instead, Boyd accused this Court, Plaintiff's counsel, and counsel for Defendant Williams of participating in conduct amounting to witness tampering (S.C. Code Ann. § 16-9-340 (A)(1) (a felony)), subornation of perjury (S.C. Code Ann. § 16-9-20 (A)(1), (2)) (a misdemeanor), obstruction of justice (S.C. Code Ann. § 16-9-340 (A)(2) (a felony), and related misconduct that implicates numerous portions of the Canons of Judicial Conduct and the Rule of Professional Conduct. Those

accusations were filed in the public record and were presented as purported grounds for disqualification of the Court.

After Plaintiff responded and demonstrated the lack of factual support for those false allegations, Defendant Boyd refused to produce the “proof” and instead sought to withdraw the Motion without prejudice but with the stated ability to refile it in the future. Having chosen to place these specious accusations of criminal and ethical misconduct against a party, a judge and numerous lawyers into the public record, Defendant Boyd should not now be permitted to avoid examination of those serious accusations by unilaterally withdrawing the Motion while reserving the right to make the same allegations again.

The Motion itself represented that counsel possessed an affidavit supporting the allegations. Counsel did not file the affidavit with the motion as mandated by Rule 6(d), SCRCPP, nor did counsel seek to file the document under seal using the procedures set forth in Rule 41.1, SCRCPP. Despite numerous requests from Plaintiff’s counsel for a copy of the affidavit, Defendant Boyd and his counsel have refused to produce it. If such purported evidence exists, it should be presented under oath and subjected to examination. If it does not exist, that fact should likewise be established on the record.

Defendant Boyd seeks to withdraw his Motion without prejudice while simultaneously preserving the right to refile it. Such a procedure would permit Defendant Boyd to retain the benefit of having publicly accused the Court and counsel of criminal and ethical misconduct while avoiding any present obligation to prove those accusations. Fundamental fairness does not permit a litigant to wield allegations of this magnitude as both a sword and a shield. If Defendant Boyd wishes to preserve the right to reassert these allegations in the future, he should first be required to establish that they were supported by a good-faith factual basis when first made.

A party who invokes the authority of the Court by filing accusations of criminal and ethical misconduct against a sitting circuit judge and opposing counsel cannot evade judicial inquiry into those accusations simply by withdrawing the motion after the accusations have been forcefully challenged. Defendant Boyd and his counsel elected to place these allegations into the public record. Having done so, they should be required to either substantiate those allegations with competent evidence or answer for their decision to make them.

The Court's authority to address these allegations is not extinguished by Defendant Boyd's attempt to withdraw the Motion. Rule 11, SCRCPP, requires that every pleading, motion, and paper filed with the Court be well grounded in fact and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. By signing and filing the Motion for Recusal, counsel certified that the factual allegations therein had evidentiary support or were likely to have evidentiary support after a reasonable opportunity for further investigation. Defendant Boyd should not be permitted to place allegations of criminal conduct, witness tampering, subornation of perjury, obstruction of justice, and judicial misconduct into the public record and then avoid scrutiny of those allegations by withdrawing the Motion after its factual deficiencies have been exposed. To hold otherwise would undermine the purpose of Rule 11 and invite litigants to file inflammatory accusations without accountability. See *Pee Dee Health Care, PA v. Estate of Thompson*, 434 S.C. 520, 538, 818 S.E.2d 758, 768 (2018) ("We are also persuaded by the fact Rule 11 permits a trial court to award sanctions 'upon its own initiative,' Rule 11, SCRCPP, and there is no stated restriction on when the trial court must do so.")

The integrity of the judiciary and of the attorneys accused in the Motion is not served by allowing unsupported attacks and accusations to remain unresolved in the public record. Public confidence in the administration of justice requires that allegations of this nature either be proven

or disproven. They should not remain suspended indefinitely in the public record while being reserved for possible future use. Public confidence in the administration of justice is not enhanced when allegations of criminal conduct by a sitting circuit judge and officers of the court are filed, publicized, and then abandoned without examination. Compare Rule 8.2, RPC, Rule 407, SCACR, and Comment [1] (“[a] lawyer shall not make a statement ... with reckless disregard as to its truth or falsity concerning the ... integrity of a judge”; “false statements by a lawyer can unfairly undermine public confidence in the administration of justice”). The interests of justice instead favor a hearing at which Defendant Boyd and his counsel must present whatever evidence they contend supports their allegations and at which the Court may determine whether those allegations possess any factual basis and whether the filing complied with Rule 11, SCRCP.

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Accept withdrawal of the request for recusal;
2. Set a hearing regarding the allegations contained in Defendant Boyd’s Motion Seeking Recusal;
3. Require production of the original affidavit and all other evidence referenced in the Motion;
4. Require Defendant Boyd and his counsel to present any witness or affiant upon whom they relied in filing the Motion;
5. Determine whether the allegations contained in the Motion were supported by competent evidence at the time they were filed;
6. Determine whether Defendant Boyd and his counsel complied with the requirements of Rule 11, SCRCP, in filing the Motion;
7. Require Defendant Boyd and his counsel to show cause why the Court should not impose sanctions against them as the Court deems appropriate under Rule 11, SCRCP, and the Court’s inherent authority if it determines the Motion was filed without evidentiary support or for an improper purpose; and

8. Grant such other and further relief as the Court deems just and proper, including an award of fees and costs to Plaintiff's counsel.

Respectfully submitted,

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