**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**

MARC AND TYRONE STEPHENS,
Plaintiffs,
v.

CITY OF ENGLEWOOD,
ENGLEWOOD POLICE DEPARTMENT,
DET. MARC MCDONALD,
DET. DESMOND SINGH,
DET. CLAUDIA CUBILLOS
DET. SANTIAGO INCLE JR.,
AND DET. NATHANIEL KINLAW,
Individually and in official capacity
NINA C. REMSON ATTORNEY AT LAW,
LLC, AND COMET LAW OFFICES, LLC
Defendants

**CASE NO**. 16-1868
CASE NO. 2:14-cv-05362-WJM-MF

**COMPLAINT OF JUDICIAL MISCONDUCT AND JUDICIAL DISABILITY AGAINST FEDERAL JUDGE WILLIAM J MARTINI, ANTHONY JOSEPH SCIRICA, LUIS FELIPE RESTREPO, AND DENNIS MICHAEL FISHER REGARDING DEFENDANT NINA C. REMSON ATTORNEY AT LAW**

## MERITS-RELATED CONSIDERATION

If a complaint of an otherwise merits-related complaint includes supported allegations that the judge had an improper motive in acting, those allegations will be considered. The nature of the judges William J Martini of the District Court, Scirica, Restrepo, and Fisher of the United States Court of Appeals for the Third Circuit, factual and legal errors, as shown below, are malicious, conducted in bad faith, bias, abuse of authority, intentional disregard of the law, and egregious. "[W]e need not reject the possibility of an exceptional case developing where the nature and extent of the legal errors are so egregious that an inference of judicial misconduct might arise". **In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).**

## STATEMENT OF THE FACTS

## MANIFEST INJUSTICE AND COURT ERROR OF FACT #1

"**With respect to the Remson Defendants, Plaintiffs have failed to demonstrate why they should be exempted from New Jersey's affidavit of merit requirement, which requires a plaintiff to show "that the complaint is meritorious by obtaining an affidavit from an appropriate licensed expert attesting to the 'reasonable probability' of professional negligence." Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 149-50 (2003) (citing N.J.S.A. 2A:53A-27). Specifically, the record shows that Plaintiffs failed to inform the Remson Defendants that they required information for the specific purpose of filling out an affidavit of merit. Scaffidi v. Horvitz, 343 N.J. Super 552, 554 (N.J. Super. Ct. App. Div. 2001). Moreover, and notwithstanding their bald assertions to the contrary, Plaintiffs have not put forth any evidence refuting the fact that they already possessed sufficient information to comply with New Jersey's affidavit of merit requirement**", **Order ECF 91, page 2**.

**A. Plaintiffs did not fail to demonstrate why they should be exempted from New Jersey's affidavit of merit requirement**

Plaintiffs argued in their opposition brief, "The Affidavit of Merit Statute, **2A:53A-28(3)** reads, "An affidavit shall not be required pursuant to section 2 of this act if the plaintiff provides a sworn statement in lieu of the affidavit setting forth that: the defendant has failed to provide plaintiff with medical records or other records or information having a substantial bearing on preparation of the affidavit; a written request therefor along with, if necessary, a signed authorization by the plaintiff for release of the medical records or other records or information requested, has been made by certified mail or personal service; and at least **45 days** have elapsed since the defendant received the request".

"Attorneys should begin discovery promptly when facts are needed to comply with the Affidavit of Merit statute. We urge counsel to time their discovery - with court intervention, if necessary - so that facts necessary to comply with N.J.S.A. 2A:53A-27 are available by the statutory deadlines." **Fink v. Thompson, 167 N.J 551, 564-65 (2001)**. The plaintiffs started 9 months before filing, and sent 8 notices to defendant for discovery.

1. **FIRST NOTICE AND REQUEST**, On November 11, 2013, Plaintiff sent Notice requesting for a few documents and emails, "other records or information", between defendant and plaintiff Marc Stephens. Plaintiff notice states the reason for the requested information is to obtain an Affidavit of Merit, "This information is needed to present to the judge", **see ECF Document 40-8, page 10**.

2. **SECOND NOTICE AND REQUEST**, February 28, 2014, Plaintiff sent Notice of Intent to sue requesting for a few documents and emails, "other records or information", between defendant and plaintiff Marc Stephens, page 8 – Legal malpractice, see **ECF Document 40-8, page 13, 20**. The notice clearly informs Remson about the Affidavit of Merit. Marc provided evidence that his emails between him and Remson were hacked, **ECF Doc. 84, pages 2-3, paragraph #2**, Police report.

On August 26, 2014 , Civil Complaint filed by Plaintiffs stating defendant "*agreed in writing not to take plea deals*", see **ECF Document 6, page 13, para #16-17.**

3. **THIRD NOTICE AND REQUEST**, October 22, 2014, Plaintiff forward discovery to defendants requesting for a few documents and emails, "other records or information", between defendant and plaintiff Marc Stephens, question #27, "*Provide any and all copies of documents and **emails** relating to or reflecting any communications between Plaintiff and Defendant*", see EX. D to Pakrul Decl., page 13, **ECF document 30-17, page 13**.

4. **FOURTH NOTICE AND REQUEST**, November 21, 2014, Plaintiff sends another request for a few documents and emails which defendant tells plaintiff to **stop requesting** for the documents, "*We still urge you to please refrain from engaging in such discovery until we have heard from the court with respect to the parameters of permissible discovery for this litigation*", EX. 7 to Marc's Decl, see **ECF Document 40-8, page 25.**

5. **FIFTH NOTICE AND REQUEST**, Plaintiff sends request for a few documents and emails, "other records or information", between defendant and plaintiff Marc Stephens which defendant ignores. The plaintiff also reminded the defendant that "*there are not many emails between us*", EX. 8 to Stephens Decl, #2., see **ECF Document 40-8, page 27.**

**45 DAYS IS EXPIRED.** ON DECEMBER 8, 2014 PURSUANT TO AFFIDAVIT OF MERIT STATUTE, 2A:53A-28(3), AFFIDAVIT IS **NOT REQUIRED** IF "AT LEAST **45 DAYS** HAVE ELAPSED SINCE THE DEFENDANT RECEIVED THE REQUEST". IN FACT THE PLAINTIFF REQUESTED ON NOVEMBER 11, 2013, **9 MONTHS** BEFORE FILING THE COMPLAINT. DEFENDANT **CONFIRMED RECEIPT OF THE REQUEST AND TOLD PLAINTIFF TO STOP ASKING FOR THE DISCOVERY**. IN ADDITION, UNDER FEDERAL LAW DEFENDANTS HAD **30 DAYS** TO ANSWER DISCOVERY WHICH THEY RESPONDED OVER **133 DAYS LATER**.

6. **SIXTH NOTICE AND REQUEST**, February 9, 2015, plaintiff is reminding defendant that discovery close on March 21, 2015, and provided Defendant with 7 days to forward requested Discovery, EX. 9 to Marc's Decl, see **ECF Document 40-8, page 30.**

7. **SEVENTH NOTICE AND REQUEST**, February 16, 2015, plaintiff forwarded a sworn statement "Waiver for Affidavit of Merit" to Judge Mark Falk., raising the argument that defendant is intentionally withholding discovery and that the Common Knowledge Exception applies by providing exhibits showing Remson agreed in writing not to plead guilty and then later forced Tyrone to plead guilty, **ECF Document 33-1, page 1-6.**

8. **EIGHTH NOTICE AND REQUEST**, February 19, 2015, the plaintiff filed a sworn statement to Judge Falk's on record stating the "Affidavit of Merit not required", **see ECF Document 30-11**.

On February 26, 2015, the defendant finally provided the plaintiffs with answers to interrogatories, request for admissions, see EX. 10 to Marc's Decl, and production of documents (**labeled Privilege Log NCR 1-195**) which contained the requested information needed for the affidavit of merit, or to prove common knowledge applied, see EX. 11 to Marc's Decl, **ECF Document 40-8, page 34.**

Defendant's documents clearly show that Defendant Nina Remson agreed **not to plead guilty,** "*I understand your position that you will not consider a plea bargain under any circumstances*", **ECF Document 40-9, page 2.**

Common knowledge applies because the Wilcox Court Order shows Remson forced Tyrone to plead guilty, without Marc's knowledge, 11 days **AFTER** Judge Wilcox gave Marc Stephens time to look for new counsel, **ECF Document 40-8, page 6.**

On March 11, 2015, Defendant files a motion for summary judgment, which is **14 days** from the defendant sending over their discovery on February 26, 2015, and **133 days** after plaintiffs discovery request on October 22, 2014, and **eight notices** to the defendant and Judge Falk that the Affidavit is not required.

## MANIFEST INJUSTICE AND COURT ERROR OF FACT #3

**B. Plaintiffs have not put forth any evidence refuting the fact that they already possessed sufficient information to comply with New Jersey's affidavit of merit requirement.**

Appellant argued that no lawyer would review their case to prepare an Affidavit of Merit **without the emails** proving Marc Stephens stated to Remson, **for 6 months**, not to take a plea deal under any circumstances, **ECF Doc 84, #3**

In addition, Remson did not provide all of the files, or answers to the complaint and interrogatories. Appellants argued that Remson failed to provide appellants with her field of specialty. **ECF Doc. 40, pg 11, section B**. Remson **admits** to providing legal services to Appellants, **ECF Doc. 16, pg 4, #16**, but does not state, in her answer to the complaint, the field in which defendant specialized, and whether her services involved that specialty. The New Jersey Supreme Court now requires a physician defending against a malpractice claim (who admits to treating the plaintiff) **must** include in his answer the field of medicine in which he specialized, if any, and whether his treatment of the plaintiff involved that specialty, **Buck v. Henry, 207 N.J. 377 (2011) at 391**. see also Ryan, supra, 203 N.J. at 52 (stating that Patients First Act provides "more detailed standards for a testifying expert and for one who executes an affidavit of merit, generally requiring the challenging expert to be equivalently qualified to the defendant"). Because Remson intentionally withheld discovery for 133 days, Appellants **could not** obtain an affidavit without knowing the case types that Remson provided, so that they could obtain a expert with equivalent background.

Appellants also argued that they substantially complied with the Affidavit of Merit Statue, **ECF Doc. 40, pg 12, section E** and that the Affidavit of Merit statue is facially unconstitutional, **ECF Doc. 40, pg 18-22, see F**. Appellants also addressed these issues in their Reply Brief, **Doc. 003112517474, pg 12-18**.

## ARGUMENT

### A. THE PANEL ERRORED BY AFFIRMING THE DISTRICT COURT'S GRANT OF JUDGMENT TO REMSON

The court is intentionally overlooking the fact that Appellant Marc Stephens provided a Sworn Statement in lieu of the Affidavit of Merit because the Defendant Remson would not cooperate with discovery, and withheld emails. "[d]efendants delayed production of important documents and records, failed to respond to requisite discovery and engaged in "gamesmanship." This raises the question whether defendants may have intentionally sought to achieve a technical defeat of valid claims", **Newell v. Ruiz, 286 F. 3d 166 - Court of Appeals, 3rd Circuit 2002 at 172**. Appellants argued Res Ipsa Loquitor, **ECF Doc. 77, pg 13, Point IV**. "[w]here the attorney intends to rely solely on the doctrine of `res ipsa loquitur'", Hubbard ex rel. **Hubbard v. Reed, 774 A. 2d 495 - NJ: Supreme Court 2001 at 500** (holding an affidavit of merit is not necessary in common knowledge malpractice cases). "Although res ipsa does not shift the burden of proof to the defendant, it ordinarily assures the plaintiff a prima facie case that will survive summary judgment". **Jerista v. Murray, 883**

**A. 2d 350 - NJ: Supreme Court 2005 at 360**. "Common knowledge is sufficient to entitle plaintiffs to the res ipsa inference", **Id at 362**. "When the average juror can deduce what happened without resort to scientific or technical knowledge, expert testimony is not mandated". **Id at 365**.

## B. THE JUDGES TOOK ON THE ROLE OF THE JURY AND JUDICIAL CONDUCT IS IMPROPER WHENEVER A JUDGE "APPEARS" BIASED

As proven above, the judges intentional ignored all testimony and created their own facts. "Due process guarantees "an absence of actual bias" on the part of a judge. In re Murchison, 349 U. S. 133, 136, (1955). **Williams v. Pennsylvania, 136 S. Ct. 1899 - Supreme Court 2016 at 1905**. "Judicial conduct [is] improper ... whenever a judge appears biased, even if she actually is not biased." **See In re Antar (SEC v. Antar), 71 F.3d 97, 101 (3d Cir.1995)**. "By stepping into the role of the [Jury], the 3rd circuit panel gave the strong impression that [they] was on the government's side. It is difficult to conclude that [plaintiffs Marc and Tyrone Stephens] received a "fair and full hearing" when the [3rd circuit panel and district court judge] ceased being the "neutral arbiter" due process demands and assumed the role of [the jury] instead". **Abulashvili v. Attorney General of US, 663 F. 3d 197 - Court of Appeals, 3rd Circuit 2011 at 208.**

## C. THE JUDGES ABUSE OF DISCRETION AND ERRORS VIOLATED COMPLAINTANTS "RIGHT TO DUE PROCESS" AND "RIGHT TO TRIAL BY JURY" WHICH ARE "FUNDAMENTAL RIGHTS"

As shown above, the Judges took on the role of the Jury, and denied Appellants right to due process and right to trial by jury. The Fifth Amendment of the Constitution of the United States reads, "No person shall be deprived of life, liberty, or property, without due process of law". "At its core, the right to due process reflects a fundamental value in our American constitutional system", **Boddie v. Connecticut, 401 US 371 - Supreme Court 1971 at 374**. The seventh Amendment to the Constitution of the United States reads, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved".

"[Error] involving the denial of basic fundamental rights may constitute judicial misconduct". **In re Dileo, 83 A. 3d 11 - NJ: Supreme Court 2014 at 15-26. In re Quirk, 705 So.2d 172, 178 (La.1997).** ("A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct." (citing Jeffrey M. Shaman, Judicial Ethics, 2 Geo. J. Legal Ethics 1, 9 (1988))). **See Alvino, supra, 100 N.J. at 97 n. 2, 494 A.2d 1014.**

## D. THE JUDGES ARE IN VIOLATION OF CANON 1-3

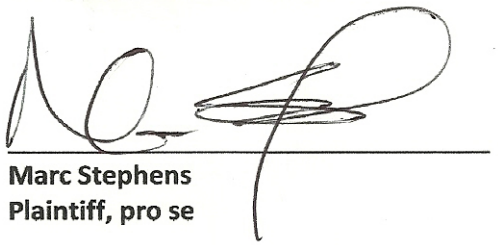
Pursuant to **Canon 1**: "[A] Judge Should Uphold the Integrity and Independence of the Judiciary. Although judges should be independent, they must comply with the law and should comply with the Code of Conduct for United States Judges. Pursuant to **Canon 2A**. "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. **Canon 3**: "A Judge Should Perform the Duties of the Office Fairly". Pursuant to the Supreme Court of the United States, "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." **Marshall v. Jerrico, Inc., 446 US 238 - Supreme Court 1980 at 242.** "federal courts have a constitutional obligation to safeguard personal liberties and to uphold federal law." **Stone v. Powell, 428 US 465 - Supreme Court 1976 at 526.**

## RULE 6(D) CERTIFICATION

In accordance with Rule 6(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the factual statements in the Complaint are true and correct, as verified in the Declarations, made under penalty of perjury, attached hereto as Exhibits 1-19.

Respectfully Submitted,

**Tyrone Stephens**
**Plaintiff, pro se**



**Marc Stephens**
**Plaintiff, pro se**