Appellant Mr. Stegeman is one hundred percent (100%) Federally disabled, whose only source of income is through Supplemental Security Income and is therefore proceeding ***Pro Se***.

There were no hearings in Superior Court before the action was dismissed, thereby there are no transcripts. Pursuant to O.C.G.A. §5-6-41(c) Mr. Stegeman prepared a transcript from recollection and from the record of documents filed in the trial Court, ***Affidavit of James B. Stegeman*** is attached hereto, and referenced herein by (T –page#).

I. STATEMENT OF RELEVENT FACTS AND PROCEEDINGS

December 22, 2005 after Mr. Stegeman was Denied the Right to timely Appeal a Final Ruling in DeKalb County Probate Court (R1-3 & R1 Ex.-1,2; T-3)[1], to timely preserve the issues, he filed Appeal and Motion for Void Judgment in Superior Court seeking to Appeal the Final Probate Court Ruling; and set aside previous Rulings in Probate Court on the grounds of illegality, fraud, fraud upon

[1] R(Record)1(document 1 Appeal filed in Superior Court December 22, 2005) -3 (page 3); R1 Ex is the 2 page Exhibit to R1. R8 is Brief in Support of Ruling in Favor of Mr. Stegeman filed January 23, 2009

the Court, and lack of jurisdiction (R1 generally; R8-7,8; T-3).

This Appeal is brought from a final ruling in Superior Court June 26, 2009.

A. Brief Background on Probate Court Proceedings

Frank J. Lillig, III ("Mr. Lillig", or "Appellee" hereinafter), ***before*** filing Petition to Probate the new Will of Ms. Geneva S. Caffrey (Appellant's elderly aunt), obtained a Bond; then filed Petition to Probate the Will, in which he made fraudulent misrepresentations and perjured himself claiming no other wills[2], the nephews were estranged from their aunt[3], that Appellant was being investigated by DeKalb County District Attorney's Office for elder abuse and felony theft by taking;[4] Mr. Lillig and Mr. Turner Petitioned for appointment as Temp. Emergency

[2] June 17, 2003 in a deposition judicial admission of actual knowledge of the original Will (filed at DeKalb County 1992 appointing Appellant executor, sole heir and benefactor of Ms. Caffrey's Estate).

[3] Ms. Caffrey had three living nephews, James Stegeman (Appellant), Douglas Stegeman living in Wisconsin and had a loving relationship, and another nephew living in Virginia that Ms. Caffrey had not seen in a number of years.

[4] According to the D.A.'s Office, Appellant was not being investigated, never had

Administrator of the Estate, immediately granted without a hearing, he (R1-4; T).

April 05, 2005 Mr. Lillig, filed for Discharge of Administrator, perjuring himself claiming that he had satisfied all debts of the Estate. On or around April 21, 2005, Appellant, proceeding ***pro se***, filed Objection to Discharge[5] as a creditor (R1-4;T-1). On or around September 07, 2005 Mr. Lillig filed Motion for Summary Judgment.

On or around October 07, 2005 Ms. McDonald, hand delivered to Probate

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been, and there were no plans to investigate Appellant.

[5] To date, Appellant has been taken to Court three times, hounded by debt collectors, subjected to foreclosure on personal property in State Court, is currently in litigation with Heritage Bank (Civil Action: 09A11176-3), for the same loan which caused Objection to Discharge. Mr. Lillig, attorney Mr. Turner, Guardian of Property, and Probate Court all had actual knowledge of the loan since 2002. Rather than have the debt paid or eliminated, the loan was left forcing Appellant to pay it while they all had actual knowledge that Appellant is 100% disabled without assets to make such payments. Under The Disabled and Elder Person's Protection Act 0.C.G.A. §30-5-8 the act is exploitation, a form of abuse.

Court for Appellant, the following: Motion to Compel Discovery, Petition to Revoke Letters Testamentary, Third Party Complaint, , Response to Summary Judgment with supporting evidence, Memorandum of Law in Support of Summary Judgment in favor of Mr. Stegeman with Affidavit of Janet D. McDonald, Affidavit of James B. Stegeman (R1-1-3).

Ms. McDonald was told by Probate Clerk Ms. King that she didn't think that the Court was going to allow anything to be filed, the law clerk would have to look at the documents and decide if they could be filed; she was instructed to leave the documents, and that Appellant would be advised the following day (R1-1,2).

Early the following day, after unsuccessfully attempting to telephone the Clerk, she was left her a voice mail. Around 3:45PM Ms. McDonald sent a FAX to Ms. King on Appellant's behalf. Ms. King, responding to the FAX called and informed Appellant that he would not be allowed to file anything. Appellant informed Ms. King they were violating his rights, and that he was going to record the conversation. Ms. King put law clerk, Mr. Fowler on the phone (R1-2,3,4).

Mr. Fowler told Appellant that he could not file Response to Summary Judgment, or any of the other documents Ms. McDonald delivered. After a heated debate about violating Appellant's Rights, Mr. Fowler agreed that Appellant could

file a Response and pay filing fees, but that it still wouldn't matter (T-2). The Court would not allow Ms. McDonald's Third Party Response and Affidavit to be used by Mr. Stegeman for Summary Judgment to be filed. (R1-2,3,4;T-2).

On or around November 03, 2005 Ms. McDonald, reviewing the docket report, found none of the documents on the docket report. Ms. McDonald, at Mr. Stegeman's request, emailed Ms. Gretchen Landau Probate Court Administrator who said that she would look into the matter. Ms. Landau emailed back, and said that she had found the documents, and didn't know why they had not been filed. Probate Court's docket report reflects that the documents were withheld until November 4th and 7th, 2009, after Probate Court's Ruling (R1-3,4; T-2*n2).

Probate Court ruled in favor of Mr. Lillig, November 03, 2005 claiming that Appellant had failed to provide any evidence that the debts were Ms. Caffrey's, the Order states that Mr. Stegeman is a beneficiary, when is not named anywhere in the Will (R1-3,4; T-2). November 28, 2005 Appellant timely filed Notice of Appeal, paid the required fee. After time had passed in which a timely Notice of Appeal could be filed, Probate Court mailed back the check used to pay the filing fee, and letter stated that it "would not be filed with this court"(R1,Ex.-1,2;T-3).

B Brief Background of Superior Court Proceedings

December 22, 2005, Appellant filed to Superior Court, Appeal from Probate Court and Motion for Void Judgment with Exhibits (R1;T-3). The Void Judgment was due to Probate Court rulings by the Probate Clerk who was without authority or power to rule, rulings for which Probate Court lacked jurisdiction, rulings procured through fraud upon the court, and rulings made in which due process of law had been violated (R1 generally; R8-7,8; T-3).

February 22, 2006, having heard from neither the opposing party, nor the Court, Appellant filed Notice of Intent to Appeal (R3; R4; R8-1; T-3). March 24, 2006 still having heard nothing, Appellant filed a Motion for Order on Appeal (R7; R8-1; T-3) and a Motion for Order on Void Judgment (R6; R8-1; T-3).

Over the course of the next three plus years, Appellant called the Court numerous times to find out the status of the Appeal/Void Judgment attempting to get an Order (T-4). He was always told that there had been no activity. The Appeal/Void Judgment was never ruled on, supported by the fact that the matter began being regularly scheduled on the peremptory hearing calendar in 2008 (R8-1,2; R8 Ex1).

Without being sent Notice so that he could attend the hearings, the

Appeal/Void Judgment appeared on the peremptory calendars of June 05, 2008,[6] November 20, 2008, June 26, 2009; and Civil Jury Calendar January 26, 2009 (R8-9). Had there been a Ruling Granting Motion to Dismiss[7] as claimed by the Court, the peremptory and jury hearing schedules would make no sense (R8).

The November 8, 2008 hearing, Judge Walker presided, Appellant was told he would be sent everything in the file, but never received anything. (R8-5,6)

At the January 2009 hearing, the Judge became very abusive toward Appellant, who was in a wheelchair. The Judge ranted and raved, threatened to have

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[6] It did not come to Appellant's attention to until sometime in July 2008, when Ms. McDonald discovered it showing on the Court docket report so missed the June 2008 hearing, he was the only party to appear for all the other hearings

[7] According to the docket report January 18, 2006 Mr. Lillig moved to have the Appeal/Void Judgment Dismissed for "failure to state a claim, lack of subject matter jurisdiction, lack of appellate jurisdiction, improper venue, failure to join necessary parties, and res judicata submitted by Robert E. Turner, attorney for Plaintiff" Appellant did not receive a Motion to Dismiss, and has no idea what the Motion actually stated.

Appellant "taken out back" (whatever that means); threatened to have him arrested for contempt; then had him physically removed from the Courtroom for inquiring into what "the technical difficulty" in the file was.(R8-6,7,8)

On June 26, 2009 Judge Shoenthal, in a Final Order, Denied Appellant's pending motions (R8-8,9). July 16, 2009 Appellant filed a timely Notice of Appeal, Motion to Proceed on Appeal in Forma Pauperis with Exhibit and the required Affidavit of Poverty (R8-9). Judge Scott Granted Motion to Proceed on Appeal in Forma Pauperis August 17, 2009(R8-10).

II. JURISDICTION AND ENUMERATION OF ERRORS

Pursuant to Rule 22 (a) and O.C.G.A. §5-6-40, the enumeration of errors shall be Part 2 of the appellant's brief… and (b) The enumeration of errors shall contain a statement of jurisdiction…

STATEMENT OF JURISDICTION

The Georgia Court of Appeals has jurisdiction in this Appeal because The Court of Appeals of Georgia reviews all appeals from the trial courts which jurisdiction has not been exclusively reserved to the Supreme Court.

The Constitution of the State of Georgia, Article VI, Section VI, Para. I et seq., provides that the Supreme Court has exclusive jurisdiction over election

contests, the construction of treaties or the Constitutions of the State of Georgia and the United States and challenges to the constitutionality of a law, ordinance or constitutional provision. The Supreme Court has general appellate jurisdiction over cases involving title to land; equity; wills; habeas corpus; extraordinary remedies; divorce and alimony; all cases certified to it by the Court of Appeals and all cases in which a sentence of death was or could be imposed.

ENUMERATION OF ERRORS

1. Superior Court erred by dismissing for lack of jurisdiction

2. Superior Court erred by refusing to observe the Doctrine of Staire Decisis.

3. Superior Court ignored that ***pro se*** pleadings are to be liberally construed, held to less stringent standards.

4. Superior Court failed to have a hearing before Dismissing, thereby depriving Appellant of property without due process of law.

5. Superior Court failed to provide Appellant with Rulings in violation of Georgia statute, due process of law, and is an impeachable offense.

6. Superior Court refused to set aside Rulings of a Probate Court Clerk who lacked authority, and power to make Rulings, and for which Probate Court lacked jurisdiction is harmful error.

7. Superior Court ignored Rulings obtained through fraud upon the court.

8. Superior Court disregarded that Appellant was denied the Right to Appeal.

9. Superior Court denied Appellant the Right of, tampered with and hindered an Appeal.

10. The Court committed error by failing to make findings in it's Ruling.

11. Threatening a disabled man in a wheelchair with having him "taken out back" and "locked up for contempt" is a blatant disregard of Appellant's Rights, disparate treatment and violates law and ADA Title II.

12. Failing to Grant relief to the only party showing up for numerous peremptory hearings, when only one party in other cases was granted relief they sought, results in disparate treatment, bias, and discrimination.

13. Having shown just cause to set aside Judgment, the trial Court erred in Denying Appellant's "motions" in the June 26, 2009 Ruling.

III. ARGUMENT AND CITATIONS OF AUTHORITY

1. Superior Court Appellate Jurisdiction

This Court does a de novo standard of review to the trial court's grant of a motion to dismiss, which may only be granted where a complaint shows with certainty that the plaintiff would not be entitled to relief under any state of facts

that could be proven in support of his claim. (Citations and punctuation omitted.) King v. Lessinger, 276 Ga. App. 145, 146 (622 SE2d 381) (2005); Dougherty v. Chaney-Bush Irrigation, 166 Ga. App. 708, 709 (1) (305 SE2d 439) (1983).

"Plainly the statute affords the court the option to decide the matter by affidavit, or deposition…or …the basis of oral testimony." Franchell v. Clark, 241 Ga. App. 128, 129 (1) (524 SE2d 512) (1999)

Having been denied the Right to Appeal a Final Ruling in Probate Court, Appellant filed in Superior Court (R1; R8-6).

> **O.C.G.A.§5-3-2(a):**"An appeal shall lie to the superior court from any decision made by the probate court, except an order appointing a temporary administrator."

See also:

> In Re Estate of Clarence E. Thomas, Ga. App. LEXIS 603,* 2007 Fulton County D. Rep. 1755 dismissed on other grounds, n3: "An appeal shall lie to the superior court from any decision made by the probate court, except… appointing a temporary administrator."

Further,, had Superior Court lacked jurisdiction for an Appeal from Probate Court, the Court would have the duty to transfer the Appeal to the appropriate

Court, just as The Supreme Court of Georgia transferred this Appeal to this Court.

2. Doctrine of Staire Decisis

The Supreme Court of Georgia has "reiterated the need to adhere to precedent so as to promote the rule of law and its predictability", see Judge Miller concurring specially in Fleet Finance &c. v. Jones, 263 Ga. 228, 232 (3) (430 SE2d 352) (1993) "The application of the doctrine of stare decisis is essential to the performance of a well-ordered system of jurisprudence." (Citations omitted.) Etkind v. Suarez, 271 Ga. 352, 357 (5) (519 SE2d 210) (1999).

3. Pre So Litigants

"The general rule is that pro se pleadings are held to less stringent standards than pleadings that are drafted by lawyers" (Citation and punctuation omitted.) Hickey v. Kostas Chiropractic Clinics, P.A., 259 Ga. App. 222, 223 (576 SE2d 614) (2003). See also: Cotton v. Bank South, N. A., 212 Ga. App. 1, 3 (1) (440 SE2d 704) (1994); Thompson v. Long, 201 Ga. App. 480, 481 (1) (411 S.E.2d 322); Jenkins v. Blue Moon Cycle, Inc., 627 S.E.2d 440, 277 Ga.App. 733 (Ga.App. 02/23/2006); Evans v. City of Atlanta, 189 Ga. App. 566, 567 (377 SE2d 31) (1988); see Haines v. Kerner, 404 U. S. 519 (92 SC 594, 30 LE2d 652) (1972), Dillingham v. Doctors Clinic, 236 Ga. 302 (223 SE2d 625) (1976). In

Thompson v. Long, (201 Ga. App. 480) (411 SE2d 322) (1991) this Court held that "OCGA 9-11-8 (f) requires that [a] 11 pleadings . . . be so construed as to do substantial justice." See Glaser v. Meek, 258 Ga. 468 (3) (369 SE2d 912) (1988).

"This court has repeatedly held that the spirit and intent of the Civil Practice Act require that pleadings are to be liberally construed in favor of the pleader." Mills v. Bing, 181 Ga. App. 475, 476 (352 SE2d 798) (1987); Tahamtan v. Dixie Ornamental Iron Co., 143 Ga. App. 561 (239 SE2d 217) (1977).

4. Due Process of Law

Both the Probate Court and Superior Court violated due process of law. Refusing to allow the filing of Responses, and Affidavits in response to Summary Judgment, is a direct due process of law violation. The "fundamental idea of due process is Notice and opportunity to be heard." *fn14 As stated in Citizens &c. Bank v. Maddox, *fn14 "[t]he benefit of notice and a hearing before judgment is not a matter of grace, but is one of right." "A party's cause of action is a property interest that cannot be denied without due process. (Cit.)"

In RE: Law Suits of Anthony J. Carter (two cases) 235 Ga. App. 551, 510 S.E.2d 91, (1998) it was held:

"As stated in paragraph 12 of the Georgia Bill of Rights, a person

> has a right to represent himself or herself in court. … Secondly, the very first provision of the Bill of Rights in "`[t]he constitution of this state guarantees to all persons due process of law and unfettered access to the courts of this state. (Cit.)'" These fundamental constitutional rights require that every party. . . the opportunity to be heard and to present his claim or defense, i.e., to have his day in court. (Cits.)'" "So it is that meaningful access to the courts must be scrupulously guarded, as it is a constitutional right universally respected where the rule of law governs. (Cits.)'"

The facts clearly show that a Probate Clerk, made almost all of the Rulings of Probate Court, including dismissing an irrevocable durable power of attorney with an interest (probate court lacks jurisdiction on property) appointment of Guardian of Property and appointment of Mr. Lillig as Emergency Administrator of Ms. Caffrey's Estate when there were two Wills;[8] Mr. Lillig with attorney Mr. Turner's actual knowledge, fraudulently claimed Mr. Stegeman was being investigated by the D.A.'s Office for felonious acts; Mr. Lillig had acquired a Bond ***before*** filing

[8] Ms. Caffrey's Original Will had been on file at DeKalb County since 1992.

the Petition to Probate the Will; and there was no hearing before granting Mr. Lillig Emergency Administration; all gives cause to have the Ruling set aside. "A judgment of a probate court (formerly court of ordinary) granting permanent letters of administration to one who is not entitled to administration may be set aside… on the ground that the applicant falsely and fraudulently represented in his application that the facts were such as to entitle him to appointment". See Phillips v. Gladney (234 Ga. 399) (216 SE2d 297) (1975); Wallace v. Wallace, 142 Ga. 408 (2) (83 SE 113); Stanley v. Metts, 169 Ga. 101 (1) (149 SE 786); Brown v. Parks, 169 Ga. 712 (1) (151 SE 340); Jackson v. Jackson, 179 Ga. 696 (177 SE 591); Bowers v. Dolen, 187 Ga. 653 (2) (1 SE2d 784); Watson v. Watson, 208 Ga. 512, 515 (1) (67 SE2d 704); Toombs v. Hilliard, 209 Ga. 755 (1) (75 SE2d 801); Smith v. Smith, 230 Ga. 616 (3) (198 SE2d 307).

Probate Court's November 2005 Summary Judgment Ruling as well as any and every Ruling/Order not specifically listed herein are all Void. "A judgment is void if the rendering court acted in a manner inconsistent with due process of law." Wright & Miller, Federal Practice and Procedure §2862.

"[T]he constitution, by prohibiting an act, renders it void, if done; otherwise, the prohibition were nugatory. Thus, the warrant is a nullity." Anderson v. Dunn,

19 U.S. 204, 217 (1821)

"A court should be cautious in exerting its inherent power and 'must comply with the mandates of due process" First Bank of Marietta v. Hartford Underwriters Insurance Company, 2002 U.S. App. LEXIS 21117, -25; 2002 FED App. 0356P (6th Cir. 2002); In Re Atlantic Pipe Corp., 304 F.3d 136, 143 (1st Cir. 2002).

5. Failure to Provide Rulings

Uniform Superior Court Rule 6.2 allows thirty (30) days for responding to a Motion. Judges are to "decide promptly on motions of any nature", the "Judge then has a duty to file with the clerk", and "to notify" the parties of the Ruling. Refusals and failures to abide by U.S.C.R. 6.2 is "grounds for impeachment" and "removal from office."

O.C.G.A. §15-6-21

> (b) "In all counties … it shall be the duty of the judge of the superior, …within in 90 days…motions of any nature."
>
> (c) "When …so decided, …the duty of the judge… to notify…"
>
> (d) "If any judge fails or refuses, …to obey the provisions of subsections (a) through (c)…any judge repeatedly or persistently fails … shall be grounds for impeachment… "

It has been long standing in Georgia that a Court's failure to notify the losing party of it's Ruling is grounds to set aside the judgment under O.C.G.A. §15-6-21(c):

> Andrus v. Andrus, 659 S.E.2d 793, 290 Ga.App. 394 (Ga.App. 03/20/2008) held: At [13]: "We are guided by our opinion in Carnes Brothers v. Cox, 243 Ga. App. 863 (534 SE2d 547) (2000) … In Carnes Brothers, we found that a trial court's failure to comply with the requirement of OCGA § 15-6-21 (c), that it provide counsel with notice of its orders, provides justification for the trial court to later set aside such an order under OCGA § 9-11-60 (g)*fn3 . Id. at 864… it failed to comply with OCGA § 15-6-21 (c). As a result, we affirm …vacating its…dismissal order."

It has long been held that the Court must provide the losing party with the Ruling so that they can Appeal. This Court has repeatedly sent the message that "the notice requirement applies to final judgments as well as decisions on motions." See Intertrust Corp. v. Fischer Imaging Corp., 198 Ga. App. 812 (1) (403 SE2d 94) (1991); Atlantic-Canadian Corp. v. Hammer &c. Assoc., 167 Ga. App. 257 (1) (306 SE2d 22) (1983); Jefferson-Pilot Fire &c. Co. v. Combs, 166

Ga. App. 274 (304 SE2d 448) (1983)."

This applies to final judgments as well, see: Morgan v. Starks, 214 Ga. App. 265 (447 SE2d 651) (1994): "…the logic of mandating notice to allow the losing party to take appropriate action applies with even stronger force to final judgments, including dismissals…"

6. Probate Court's Lack of Jurisdiction, Power, and Authority to Rule

Appellant showed Superior Court a Probate Court Clerk lacked authority and power to make rulings, and P lacked jurisdiction for many of its' Rulings, i.e. finding Appellant guilty of felonies, dismissing irrevocable Durable POA with an interest due to property rights (R1-4,5;T-2,3).

> O.C.G.A. §15-9-36. (b) "The appointed clerks, including the chief clerk of the probate judge, may do all acts the judges of the probate courts could do which are not judicial …" (c)(1) "In addition … uncontested matters in the probate court…."

Over 130 years ago, Supreme Court offered a classic example and held: Bradley v. Fisher, 80 U.S. 335, 352 (1872)

> "if a probate court, invested only with authority over wills…estates…, should proceed to try parties for [criminal]

> offenses, jurisdiction over the subject of offenses being entirely wanting in the court,…his commission would offer no protection to him in the exercise of usurped authority." "…whereas a probate court judge would not be immune from liability if he tried a criminal case because he clearly lacked all subject matter jurisdiction. Id. (citing Bradley, 80 U.S. (13 Wall.) at 352).

"No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party." Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 15 (1970). The facts show Probate Court refused to allow an Appeal of a Final Ruling. Probate Court had no intention of setting aside it's Rulings or having the rulings scrutinized, and caused harm to Appellant.

"They were obligated first to move to set aside that probate court order, either in the probate court or in an original action in superior court under OCGA 9-11-60 (d) (1), or to obtain its reversal by way of appeal." Mobley et., el., v. Sewell, et., al., (226 Ga. App. 866) (487 SE2d 398) (1997). Appellant attempted to have the ruling set aside in an original action in superior Court, Superior Court Dismissed without a hearing, and failed to notify Appellant of the dismissal.

7. Fraud Upon the Court to Obtain Favorable Rulings

Probate Court's Rulings had been obtained through fraud upon the Court are not merely voidable, but are in fact Void. Mr. Lillig and his attorney Mr. Turner (an officer of the court) knowingly, willingly, wantonly, committed perjury and subornated perjury, worked a scheme to commit fraud upon the Court to obtain Rulings (T-2,3).

Fraud upon the Court "is fraud which is directed to the judicial machinery itself … H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co., 536 F.2d 1115 (6th Cir.). Since "attorneys are officers of the Court" and Mr. Lillig's attorney was intimately involved in the "dishonest conduct", the conduct constitutes "fraud on the Court" Porter, 536 F.2d at 1119. Bulloch v. United States, 763 F.2d held the following:

> "court may investigate a question as to whether there was fraud in the procurement of a judgment. Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447. This is to be done in adversary proceedings …. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250; Sprague v. Ticonic National Bank, 307 U.S. 161, 59 S.Ct. 777, 83 L.Ed. 1184; and United States v. Throckmorton, 98 U.S. (8 Otto) 61, 25 L.Ed. 93."

> "Fraud on the court (other than fraud as to jurisdiction) is fraud which is directed to the judicial machinery itself … H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co., 536 F.2d 1115 (6th Cir.). It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function--thus where the impartial functions of the court have been directly corrupted." ""Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." Porter, 536 F.2d at 1119.""

8. Denial of, Tampering With, Hindering Appellant's Right to Appeal:

Appellant was Denied the Right to Appeal Final Rulings in both Probate and Superior Courts. Superior Court refused to provide a Ruling, in effect Superior Court "suppressed Appeal documents", "thereby making it impossible to Appeal", clearly suppression and outright denials of an Appeal are direct "violations of the equal protection clause of the Fourteenth Amendment". See Cochran v. Kansas, et., al., 62 S. Ct. 1068, 316 U.S. 255 (U.S. 05/11/1942) holding that "The State properly concedes that if the alleged facts pertaining to suppression of Cochran's appeal were disclosed as true before the Supreme Court of Kansas, there would be

no question but that there was a violation of the equal protection clause of the Fourteenth Amendment."

"In this Court, the State admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of the Equal Protection Clause of the Fourteenth Amendment." Cochran v. Kansas, 316 U. S. 255.

The United States Supreme Court, in Cochran v. Kansas, et., al., reversed and remanded, Mr. Justice Black delivered the opinion of the Court and speaking of suppression of appeal documents and Appeals:

> Cochran v. Kansas, et., al., 62 S. Ct. 1068, 316 U.S. 255, 86 L. Ed. 1453, 1942 SCT. 40529 (U.S. 05/11/1942) at [17]: "The state properly concedes that if …suppression of Cochran's appeal "were disclosed as being true…there would be no questions but there was a violation of the equal protection clause of the Fourteenth Amendment." "…refused him privileges of appeal which it afforded to others…"

Ms. McDonald paid for Appeal from Probate Court's ruling. After the time in which Notice of Appeal could be filed, the check was mailed back, and Mr. Stegeman was informed that an Appeal would not be filed in Probate Court.

In Cambron, the Supreme Court held that where the losing party is not informed of the entry of an appealable order until after the time for appeal has run, a motion to set aside the judgment should be granted and the order should be reissued to allow a timely appeal. 246 Ga. at 147-149 (1). This applies to final judgments as well, see:

> Morgan v. Starks, 214 Ga. App. 265 (447 SE2d 651) (1994):
>
> "…the logic of mandating notice to allow the losing party to take appropriate action applies with even stronger force to final judgments, including dismissals…. See Intertrust Corp. v. Fischer Imaging Corp., 198 Ga. App. 812 (1) (403 SE2d 94) (1991); Atlantic-Canadian Corp. v. Hammer &c. Assoc., 167 Ga. App. 257 (1) (306 SE2d 22) (1983); Jefferson-Pilot Fire &c. Co. v. Combs, 166 Ga. App. 274 (304 SE2d 448) (1983)."

9. Failure to make Findings in it's Ruling.

Nether the March 2006 Ruling, nor the July 2009 Ruling contained the necessary findings, and/or failed to find on a material issue thereby the Ruling is error. See White v. Johnson, 259 S.E. 2d 731, 151 Ga. App. 345 September 14, 1979 which held:

> "Where the trial court fails to make findings, or to find on a material issue, and an appeal is taken, the appellate court will normally vacate the judgment and remand the action for appropriate finding to be made." 5A Moore, Federal Practice ¶2718, 52.06[2]. (2d Ed. 1953). (cases cited) "Spivey v. Mayson, 124 Ga. App. 775 (186 S.E. 2d 154)." "Bituminous Cas. Corp. v. J.B. Forrest & Sons, 132 Ga. App. 714, 720 (209 S.E. 2d 6) (1974)".

The trial courts' lack of findings of fact and Conclusions of law are deficient, they fail to resolve a "material issue".

10. Threats of physical harm and incarceration, and ADA Title II

Appellant, a disabled individual, proceeding ***pro se*** has been subjected to disparate treatment, threatened with harm and incarceration.

In Tennessee v. Lane**,** 541 U.S. 513 (2004), JUSTICE STEVENS delivered the opinion of the Court:

> "Title II of the ***Americans with Disabilities Act of 1990*** (ADA or Act), 104 Stat. 337, 42 U. S. C. §§12131–12165, provides that "no qualified individual with a disability shall, ……denied the benefits …, or be subjected to discrimination by any such entity."' "The

Due Process Clause also requires the States to afford … "meaningful opportunity to be heard" ' Boddie v. Connecticut, 401 U. S. 371, 379 (1971); M. L. B. v. S. L. J., 519 U. S. 102 (1996). Pg.20: "The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts…" Pg.21 *fn 20 "Because this case implicates the right of access to the courts, we need not consider whether Title II's duty to accommodate exceeds what the Constitution requires …See Garrett, 531 U. S., at 372."

See also:

U.S. v. Georgia 04-1203 (2006), Goodman v. Georgia 04-1236 (2006) Justice Stevens with Justice Ginsberg concurring: "…interference with access to the judicial process, and procedural due process violations…

The U.S. Supreme Court in Lane, 541 U.S. at 523-528 teaches:

"Title II enforces rights under the Equal Protection Clause as well as an array of rights subject to heightened constitutional scrutiny under the Due Process Clause of the Fourteenth Amendment;

accord Constantine, 411 F.3d at 486-487."

"Title II enforces the Equal Protection Clause's prohibition of …based on hostility, or 'mere negative attitudes'", University of Ala. v. Garrett, 531 U.S. 356, 367 (2001); "to private biases", Palmore v. Sidoti, 466 U.S. 429, 433 (1984).

It would be ludicrous to believe that the Stone Mountain Judicial Circuit's Superior Court threatens all disabled, and/or pro se litigants. Appellant has been subjected to disparate treatment, "differently than others who are similarly situated"; differently than pro se litigants at the hearings; and although there were no disabled litigants in wheelchairs at the hearings, Appellant cannot believe that the Court threatens other disabled pro se litigants with harm or incarceration.

"The Supreme Court's decision in Georgia indicates that it is important for lower Courts to determine on a claim-by-claim basis (1) which aspects of the State's alleged conduct violates Title II; (2) to what extent such alleged misconduct also violates the Constitution; and (3) whether such alleged misconduct violates Title II but does not violate the Constitution Georgia 546 U.S. 126 S.Ct. at 882." Miller v. King, 449 F.2d 1149, 17 A.D. cases 1758 (11th Cir. 05/17/2006) vacated and remanded.

The United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 656-57 (1950) held: "There can be no doubt that, at a minimum, the Due Process Clause requires notice and the opportunity to be heard incident to the deprivation of life, liberty or property at the hands of the government…the government must provide the requisite notice and opportunity for a hearing 'at a meaningful time and in a meaningful manner'".

11. Peremptory Hearings

Mr. Stegeman appeared for the November 20, 2008 peremptory calendar hearing, yet the opposing party and or their' attorney failed to appear. In every case at the peremptory hearing which one of the parties or their attorney(s) failed to appear, there was a ruling in favor of the appearing party. Pleadings should be dismissed for failure to attend the peremptory calendar hearing.

> Uniform Superior Court Rule 20. Peremptory calendar
>
> "Periodically …published a list of pending civil actions in which the discovery period has expired …upon reasonable notice requiring the parties … to announce whether …. ready for trial …Failure to appear at the calendar sounding … may result in…:
>
> (A) In civil actions, the dismissal…of…defendant's answer, …"

Rule 14. Dismissal

"On its own motion or upon motion of the opposite party, the court may dismiss … any pleading filed on behalf of any party upon the failure to properly respond to the call …

Failure to appear for peremptory calendars is grounds for dismissing pleadings and upon review is not an abuse of discretion: Hammonds v. Sherman, 627 S.E.2d 110, 277 Ga.App. 498 (Ga.App. 02/06/2006): at [11]: "A trial court may dismiss … for failure to appear at a peremptory calendar call, *fn2" at [16]: "*fn2 See Unif. Super. Ct. R. 20(A); Unif. Super. Ct. R. 14; OCGA § 9-11-41 (b)."

12. Cause to set aside judgment

In Wasden v. Rusco Indus., 233 Ga. 439, 445 (211 SE2d 733) (1975), the Supreme Court held that " [s]tatutes of limitation have no application to [void] judgments, and there can be no bar, estoppel or limitation as to the time when a void judgment may be attacked." The language used in Wasden to specify when a judgment is void on its face is virtually identical to OCGA 9-11-60 (d) to specify when a judgment is subject to being set aside due to a nonamendable defect apparent on the face of the record. The court held that "a judgment is void on its face when there is a non-amendable defect appearing on the face of the record or

pleadings " Id. at 444. See also Ricks v. Liberty Loan Corp., 146 Ga. App. 594 (1 & 2) (247 SE2d 133) (1978) (cert. den.). See, e.g., Cambron v. Canal Ins. Co., 246 Ga. 147 (1) (269 SE2d 426) (1980) (holding that an order denying a motion for new trial was properly set aside based on the court's failure to notify the appellant of the decision); Beach's Constr. Co. v. Moss, 168 Ga. App. 462 (309 SE2d 382) (1983) (holding that the failure of counsel or a party acting pro se to receive notice of trial was such a defect would authorize setting aside of judgment against that party); Brown v. Wilson Chevrolet-Olds, 150 Ga. App. 525 (258 SE2d 139) (1979) (failure to endorse the defendant creditor's answer on a personal property foreclosure petition was a nonamendable defect rendering the judgment subject to set aside); Redding v. Commonwealth of America, 143 Ga. App. 215, 216 (1) (237 SE2d 689) (1977), disapproved on other grounds in Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978) (failure to conduct a jury trial was a nonamendable defect where no waiver of jury trial appeared of record). See also Coker v. Coker, 251 Ga. 542 (307 SE2d 921) (1983); Scott v. W. S. Badcock Corp., 161 Ga. App. 826 (289 SE2d 769) (1982). In light of this history of construction of the language of the statute, we interpret Wasden v. Rusco Indus., supra, to mean that a judgment is always to be considered void if

there is a nonamendable defect apparent on the face of the record,…is always subject to attack by motion to set aside…."

CONCLUSION

Appellant's Rights have been violated, he has been treated with bias, discrimination, and threatened by the Court; has been denied his right to appeal, denied due process of law before being deprived of property, denied what others in similar situations were granted.

Appellant Moves this Honorable Court to find void: 1) Rulings obtained through fraud upon the court; 2) Rulings made without jurisdiction by Probate Court, or Remand to Superior Court with directions for that Court to so Rule; 3) Rulings made without due process of law. Appellant further moves this Court for to Reverse Dismissal of Appeal by Superior Court, and any other relief which this Court feels may be fair and just.

Respectfully submitted this 14th day of October, 2009

By: _____

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IN THE GEORGIA COURT OF APPEALS

Appeal No: A010A0383

James B. Stegeman,
Appellant

v.

Frank J. Lillig, III,
Appellee

CERTIFICATE OF SERVICE

I hereby Certify that I have this 28th day of October, 2009 served upon Appellee, through his attorney on file, a true and correct copy of the foregoing ***Appellant's Brief*** by causing to be deposited with USPS Certified Mail, proper postage affixed, addressed as follows:

Robert Turner
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