

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	C/A No. 2021-CP-25-00392
Renee S. Beach, Phillip Beach, Robin Beach,	)	
Savannah Tuten, and Seth Tuten,	)	
Plaintiffs,	)	RULE 59(E) MOTION TO RECONSIDER
	)	NON-PARTY AMANDA MATNEY’S
	)	ORDER FINDING HER IN CONTEMPT
v.	)	CONTEMPT AND
	)	CONFIDENTIALITY ORDER
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.	)	

Pursuant to Rule 59(e), SCRCPP, non-party Amanda Matney (“Ms. Matney”), by and through undersigned counsel, moves to reconsider and to alter or amend the July 13 Order (the “Order”) finding Ms. Matney in contempt. Matt and he also request reconsideration of the confidentiality order to the extent that it denies her the ability to examine detail billing for the contempt matter. In support, Ms. Matney shows the following:

SUMMARY OF ARGUMENT

The Court held a non-party witness in contempt and ordered her to pay \$176,500 — a \$5,000 fine and \$171,500 of the other side’s attorney’s fees — for missing a single deposition location on a single morning, a deposition that went forward eleven days later with no harm to Defendants, other than their reasonable time and expense related to attending and waiting for Ms. Matney to appear for her deposition on March 27, 2026.

There are multiple problems run through the Order, and the first is the most basic. Ms. Matney was ordered to pay \$171,500 in fees built on billing records filed under seal. She was never

allowed to challenge the reasonableness of these fees, or even see them, and she was denied a hearing – which is required by South Carolina law when making someone pay another’s attorney’s fees. Second, the \$5,000 fine is punitive and outside of a civil contempt— the Order says it is meant to deter and to promote respect for the law — and a punitive fine on an obligation already performed falls under the Excessive Fines Clause. Third, the contempt finding itself rests on an unverified initiating motion, on a cramped reading of “adequate excuse” that ignores that Ms. Matney showed up in the right city and stood ready to proceed, and on her protected commentary as a journalist. Justice demands that the Court vacate the contempt order and the sanctions, and at the very least give Ms. Matney access to the fee records and the hearing she was promised before any fee is imposed.

INTRODUCTION

The Order imposes three separate sanctions on Ms. Matney, a non-party witness: a contempt finding, \$171,500 in attorney’s fees and costs to Parker’s Defendants, and a \$5,000 fine. Each is independently subject to reconsideration. The label on the proceeding does not control. Although the Order calls this “civil contempt,” it is the character of each sanction — not its name — that decides what protections apply. A fine that cannot be avoided by compliance, because the underlying obligation is already performed, is punitive, and the Eighth Amendment’s Excessive Fines Clause governs it whatever the proceeding is called.

The standard of review favors reconsideration. Although Ms. Matney vehemently disagrees with many of the findings of fact of the Court, this motion turns on questions of law including: the denial of any chance to see and contest the fee records; improper procedure; the limits on punishing protected speech; the constitutional proportionality of the sanction; the verified-petition requirement; and the standard for adequate excuse.

I. THE COURT ORDERED A NON-PARTY TO PAY \$171,500 IN ATTORNEY'S FEES BASED ON BILLING RECORDS IT NEVER ALLOWED HER TO SEE, DENYING HER ANY MEANINGFUL CHANCE TO CHALLENGE THEM.

The Court ordered Ms. Matney, a non-party witness, to pay Parker's Defendants \$171,500 in attorney's fees. It did so on the strength of fee affidavits and billing statements that Parker's Defendants filed under seal. Ms. Matney was never allowed to see them. She still has not seen them. She was told what she owed, but not why, and she was given no way to test a single entry.

That is not a fee dispute. It is an order to pay a six-figure bill sight unseen. Ms. Matney could not check the hourly rates. She could not check the hours. She could not check whether three law firms billed three times over for the same task. She could not check whether any of the work had anything to do with the one thing she is accused of — not appearing at a deposition location on a single morning. A person cannot challenge the reasonableness of a bill she is forbidden to read, and no court should make her try.

The right to contest an attorney's fee is not a courtesy. Our Court of Appeals has explained why fees must be gotten right:

“Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar.”

Weatherford v. Price, 340 S.C. 572, 582, 532 S.E.2d 310, 315 (Ct. App. 2000). Additionally, for an attorney's fee award to stand, there must be specific findings of fact on the record for each factor to be considered by the court—merely citing to the standard is not sufficient. *See Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993) (“When an award of attorney's fees

is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in *Collins*.”) (citing *Collins v. Collins*, 239 S.C. 170, 179, 122 S.E.2d 1, 4 (1961)).

Due process requires, at a minimum, notice of the claim against a person and a meaningful opportunity to be heard on it. See *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767, 100 S. Ct. 2455, 2464, 65 L. Ed. 2d 488 (1980) (“Like other sanctions, attorney’s fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.”). Ms. Matney received neither as to the fees. She had notice of the number — \$171,500 — but no notice of what made it up, and no opportunity to be heard on any of it. An opportunity to object to a bill you cannot see is no opportunity at all.

Courts around the country vacate fee awards imposed this way — whether the fee papers are sealed, filed ex parte, or simply never served on the party who must pay them. An award entered without giving that party the records and a chance to be heard cannot stand. See, e.g., *In re Marriage of Young*, 172 Or. App. 108, 111–12, 17 P.3d 577, 578–79 (2001) (in a contempt case, awarding fees “without affording [the respondent] the opportunity to respond to [the] statement of fees” deprived her of due process and required reversal); *Griffin v. Griffin*, 579 So. 2d 1266, 1268 (Miss. 1991) (reversing a contempt fee award built on an ex parte affidavit, because the party had “the right to be present when evidence concerning attorney’s fees was presented, and [the] right to opportunity to examine witnesses and question [the] reasonableness of [the] award”); *Harris v. Allstate Ins. Co.*, 208 W. Va. 359, 363, 540 S.E.2d 576, 580 (2000) (trial court “violated due process by awarding attorney fees and costs without a hearing”); *Mechanical Methods Co. v. Klein*, 535 So. 2d 693, 694 (Fla. Dist. Ct. App. 1988) (“a party seeking an award of attorney’s fees must reveal to the opposing party the basis of such an award prior to a hearing on the matter”); *Poulsen*

v. Frear, 946 P.2d 738, 743–44 (Utah Ct. App. 1997) (fees “cannot be awarded unless supported by an affidavit and unless [the paying party] has a chance to challenge the reasonableness of the fees”); *Valley Bank & Trust Co. v. Rite Way Concrete Forming, Inc.*, 742 P.2d 105, 111–12 (Utah Ct. App. 1987) (fee award “improper” where “judgment was entered before [the paying party] had an opportunity to see and respond to [the] affidavit on attorney fees”); *In re Estate of Huff*, 15 S.W.3d 301, 309–10 (Tex. App.—Texarkana 2000, no pet.) (admission of an ex parte attorney-fee affidavit the opposing party had no “opportunity to dispute” was an abuse of discretion); *State v. Baungartner*, 273 N.C. App. 580, 582, 850 S.E.2d 549, 551 (2020) (vacating a fee order where the party was not “given [an] opportunity to be heard ... on [the] issue of attorney fees”). If anything, sealing makes it worse: a party seeking fees may not keep its own fee records under seal from the very party it asks the court to bill. *See Texas Roadhouse, Inc. v. Texas Corral Rests., Inc.*, No. 2:16-CV-28-JVB-PRC, 2017 WL 10820049, at *2 (N.D. Ind. Apr. 19, 2017) (denying a motion to seal the movant’s unredacted statement of fees).

This issue was raised by Ms. Matney’s Counsel during the June 22, 2026 hearing, when she indicated that they would like an opportunity to object to the fee information from the Parker Defendants. Although on June 22, 2026, the Court indicated that Ms. Matney would have a chance to object to the attorney’s fees documents, the detailed billing records were never provided. Any meaningful ability to challenge the reasonableness of the fees billed would have required the billing documents to be provided with sufficient time to object and to have an expert review them. However, the itemized billing information was never even provided to Ms. Matney. (See Exhibit A). The Court simply entered the award on the sealed, untested submissions.

The failure to require that the billing records be provided to both sides was an error of law. South Carolina requires that a fee award rest on evidence establishing the reasonableness of the

rates and the hours, and that the party ordered to pay have a real chance to contest them. *See Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp.*, 295 S.C. 208, 211, 367 S.E.2d 696, 698 (1988) (holding an attorney's fee award of \$125,000 on a single cause of action "outrageous and shocking to the conscience of the court" where the record contained no evidence of the reasonableness of the fee or of how it should be apportioned among the case's several causes of action, and remanding for a proper evidentiary determination).

Deciding the question on sealed papers, with no adversary and no hearing, is the opposite of that. Whether the Court's private review of the sealed materials was careful is beside the point. The defect is that Ms. Matney was shut out of the process entirely.

Ms. Matney asks the Court to vacate the \$171,500 fee award. At a minimum, she asks the Court to (a) give her and her counsel full access to the fee affidavits and billing records, subject to any appropriate confidentiality protections; (b) require that the billing be itemized, with descriptions of the time claimed; (c) hold a hearing on the reasonableness of the fees before any fee is awarded; (d) allow her to present testimony concerning the reasonableness of attorney fees claimed; and after such hearing make specific findings of fact on the record as to each factor set forth in *Collins*, based upon itemized billing.

II. THE \$5,000 FINE IS CRIMINAL CONTEMPT IN ALL BUT NAME, AND THE COURT ERRED BY IMPOSING IT IN A PROCEEDING IT CONDUCTED AS CIVIL CONTEMPT, CONFLATING THE TWO.

South Carolina, like every court, keeps civil and criminal contempt separate, because they do different work and carry different protections. Civil contempt is remedial: it coerces compliance or compensates the complainant, and it is proven by clear and convincing evidence. Criminal contempt is punitive. Its "primary purposes ... are to preserve the court's authority and to punish

for disobedience of its orders,” and because it is punishment, it carries the protections of a criminal case. *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998); see *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441 (1911) (“If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.”).

The label does not decide which is which; the character of the sanction does. *Poston*, 331 S.C. at 111–12, 502 S.E.2d at 88–89; *Gompers*, 221 U.S. at 443 (whether the contemnor can avoid the sanction by compliance “affords a test by which to determine the character of the punishment”). And South Carolina draws the line in a way that resolves this case: “If the sanction is a fine, it is punitive when it is paid to the court.” *Poston*, 331 S.C. at 112, 502 S.E.2d at 89. The \$5,000 fine is payable to the court, not to Parker’s Defendants. The Order imposes it “to deter similar conduct in the future and to promote respect for the law” — deterrence and vindication of the court’s authority, the textbook purposes of criminal contempt. By its own terms, the fine is criminal contempt.

This Court, however, conducted this proceeding as civil contempt from beginning to end. It applied the civil burden — “[c]ivil contempt must be proven by clear and convincing evidence” — and said so repeatedly. It treated the attorney’s fees as “not a punishment but an indemnification,” the civil-compensatory rationale. It found Ms. Matney “in civil contempt.” Then, on that civil record and that civil burden, it imposed a criminal-contempt punishment. That is the conflation, and it is error.

A court may not do this. A criminal-contempt punishment cannot be imposed in a proceeding brought and tried as civil contempt. *Gompers* held exactly that, reversing a contempt judgment and directing that the proceeding be dismissed, because a punitive punishment “could

not properly be imposed in contempt proceedings” conducted as civil contempt. *Gompers*, 221 U.S. at 441–45. The reason is that criminal contempt carries protections civil contempt does not: the accused “is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself.” *Id.* at 444; *accord Poston*, 331 S.C. at 113, 502 S.E.2d at 89 (“In a criminal contempt proceeding, the burden of proof is beyond a reasonable doubt.”). Additionally, the court did not provide Ms. Matney with the rights afforded to criminal defendants by the South Carolina Constitution such as those listed under Article I, Section 11 of the South Carolina Constitution. Moreover, criminal defendants have a Fifth Amendment right not to be called as witnesses in their own cases. Ms. Matney was held to the clear-and-convincing standard, not proof beyond a reasonable doubt; she was never told she faced criminal contempt; and, as the following section explains, she was compelled to testify at the April 7 hearing that produced the basis for the rule against her. *See People v. Covington*, 395 Ill. App. 3d 996, 1006–08, 917 N.E.2d 618, 627–29 (Ill. App. Ct. 2009) (holding that where the sanction imposed was punitive, the proceeding was criminal contempt regardless of its label, and that conducting it without proper notice and by shifting the movant’s burden of proof onto the respondent required vacatur).

Ms. Matney asks the Court to vacate the \$5,000 fine. A punitive fine imposed in a proceeding conducted as civil contempt — on the civil burden of proof and without the protections criminal contempt requires — cannot stand.

III. THE TOTAL MONETARY SANCTION VIOLATES THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT AND ARTICLE I, SECTION 15 OF THE SOUTH CAROLINA CONSTITUTION.

A. The Sanctions Are “Fines” Under the Clause.

The Eighth Amendment says “excessive fines” shall not be “imposed.” U.S. Const. amend. VIII. The South Carolina Constitution uses the same words: “nor shall excessive fines be imposed.” S.C. Const. art. I, § 15. Incorporated against the states through the Fourteenth Amendment, the Clause reaches every state court. *Timbs v. Indiana*, 586 U.S. 146, 151–55, 139 S. Ct. 682, 687–90 (2019) (unanimous opinion by Ginsburg, J.) (“The Eighth Amendment’s Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment’s Due Process Clause.”).

The Eighth Amendment reaches any government-extracted payment that is at least “partially punitive.” *Austin v. United States*, 509 U.S. 602, 609–10, 113 S. Ct. 2801 (1993). This fine qualifies, because the Court imposed it as punishment and to deter. *Id.* at 610. The Order’s own words prove it: the \$5,000 fine is “to deter similar conduct in the future and to promote respect for the law” — punitive purposes. *City of Seattle v. Long*, 198 Wn.2d 136, 493 P.3d 94 (2021) (“[D]eterrence has traditionally been viewed as a goal of punishment.” (citing *United States v. Bajakajian*, 524 U.S. 321, 329, 118 S. Ct. 2028 (1998))). The \$171,500 fee award qualifies too. It was imposed without letting Ms. Matney see the sealed billing records, and by the Order’s own findings it sweeps in motion practice the Court called meritless and burdensome — more than pure indemnification, and enough to bring the award within *Austin*’s “partially punitive” test, whatever the label.

The total sanction — \$176,500, made up of the \$5,000 fine and the \$171,500 fee award — imposed on a non-party witness for missing one deposition that went forward prior to the court issuing the rule to show cause, is a “fine” subject to excessive-fines review. The analysis here does not turn on how the contempt is labeled. *Austin* asks only whether the sanction is at least partly punitive, and the Order answers that itself. Any additional protections that attach independent of the issues raised above; the Eighth Amendment claim stands alone.

B. The Sanction Is Grossly Disproportionate to the Offense.

“The touchstone of the constitutional inquiry under the Excessive Fines Clause of the U.S. Constitution is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.” *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 88, 777 S.E.2d 176 (2015) (quoting *Bajakajian*, 524 U.S. at 334). A fine is unconstitutional if it is “grossly disproportional to the gravity of [the] offense.” *Bajakajian*, 524 U.S. at 336.

The offense is a non-party witness’s failure to appear at one deposition location on one day. The deposition went forward eleven days later, on April 8, 2026, at the Spartanburg County Courthouse, as the Court directed. No party lost Ms. Matney’s testimony. No trial was delayed. No case-dispositive right was lost. At most, the discovery schedule slipped briefly. And any sanction imposed on Ms. Matney must be related to reimbursing Defendants for their reasonable costs incurred on the date of the missed deposition and on April 7, 2026 during the hearing which ensured that the deposition would proceed forward on April 8, 2026. Reasonable attorneys’ fees would not have included motions practice unless there is a specific finding of bad faith. Such reasonable expenses would have ended once Ms. Matney appeared for a deposition on April 8, 2026.

A \$176,500 sanction is not related to reimbursing Defendants for the time they set aside on March 27, 2026, to conduct Ms. Matney's deposition. \$176,500 is not a reasonable indemnification to Defendants for instituting the contempt proceeding. And a \$176,500 sanction for missing a deposition has no rational relationship to the gravity of missing a deposition. The point is easy to see against the maximum fines South Carolina sets for real crimes:

Offense (South Carolina)	Maximum Statutory Fine
Present Case--failure to appear at a deposition	\$5,000 fine + \$171,500 fees = \$176,500 total monetary sanction
Direct contempt of court in session, S.C. Code § 14-1-150	\$50
Simple assault and battery (misdemeanor), S.C. Code § 16-3-600(E)	\$500
Trespassing / malicious injury to property < \$2,000, S.C. Code § 16-11-510	\$1,000
Stalking (first offense), S.C. Code § 16-3-1720	\$1,000
Obstruction of justice (misdemeanor), S.C. Code § 16-9-340	\$1,000
Felony DUI- resulting in great bodily injury	\$15,000
Felony DUI- resulting in death	\$25,000

Ms. Matney's sanction dwarfs the statutory maximum for stalking, simple assault, obstruction of justice, and trespass. To put this in perspective, the monetary sanction for Ms. Matney in this case is more than seven times the maximum statutory fine for felony DUI resulting in death. A non-party's dispute over a deposition location, causing no lasting loss to anyone, cannot justify a sanction of this size. *See Bajakajian*, 524 U.S. at 337–40 (treating “the other penalties that may be imposed for the violation” as a proportionality factor).

Ortho-McNeil requires the penalty to “bear some relationship to the gravity of the offense,” and this one does not. South Carolina has not yet built out its Excessive Fines jurisprudence under the Eighth Amendment or article I, section 15 — one reason this case is a fit vehicle to develop it — but the law is clear that the relationship between penalty and offense must be genuine. A

\$176,500 penalty for a location dispute resolved in eleven days, with no lasting harm and no delay of trial, is not proportionate to the conduct.

C. The \$5,000 Fine Is Punitive, Not Coercive, and Cannot Be Purged by Compliance.

The Order calls this a civil contempt case, then imposes a \$5,000 fine payable to the court and justifies it as deterrence — on top of the compensatory fees. The Order says:

“The Court also believes that a fine, in addition to the above-referenced costs and expenses, is necessary here to deter similar conduct in the future and to promote respect for the law.”

That is a punitive fine, and the label on the proceeding does not change it. What matters is whether the person held in contempt keeps the keys to her own punishment. A coercive civil sanction — the kind the Excessive Fines Clause does not reach — is one the contemnor can end by obeying the order. *See Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441 (1911) (civil contempt fines are not punitive because the person “holds the keys of the prison in his own pocket”); *see also United States v. Mongelli*, 2 F.3d 29, 30 (2d Cir. 1993) (the Eighth Amendment is implicated when a contempt fine becomes punitive in nature). A fine meant to punish, to vindicate the court’s authority, or to deter — one no act of compliance can lift — is different, and the Eighth Amendment applies. *See Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998) (“The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant.” (quoting *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441 (1911))). A fine paid to the court to deter and to promote respect for the law is punitive.

The \$5,000 fine fails on both counts. It is payable to the court, not to Parker’s Defendants. Nothing Ms. Matney can do will purge it. There is nothing left to purge — she sat for her deposition

on April 8, 2026, as the Order itself acknowledges. When the underlying obligation is already done, a fine with no purge provision cannot coerce anything; it can only punish.

The timing proves that this fine was meant to punish. The Order issued July 13, 2026 — more than three and a half months after the March 27, 2026 dispute and more than three months after Ms. Matney’s April 8 deposition. She never held the keys to this sanction. *See Mongelli*, 2 F.3d at 30. She had already done what was asked before the Order existed, so no act of compliance was available to her. The fine exists to punish and deter, nothing else. That is exactly what the Excessive Fines Clause checks.

However the Court characterized the contempt, the punitive character of the fine triggers the Excessive Fines Clause of the Eighth Amendment and the parallel provision of the South Carolina Constitution.

IV. ESTABLISHING CRIMINAL CONTEMPT THROUGH THE COMPELLED TESTIMONY OF MS. MATNEY DURING THE APRIL 7, 2026 HEARING, VIOLATED THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

“The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders.” *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998) (citing *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct.App.1994)). As previously stated, the \$5,000 fine has all the hallmarks of criminal contempt.

On April 7th, 2026, Attorney Bannister indicated that they would need to lay a foundation for the rule to show cause hearing by calling Ms. Matney to testify. Although an individual can be required to testify against themselves at a civil rule to show cause hearing, the Fifth Amendment is implicated when the ultimate result of the rule to show cause hearing is punitive contempt

findings. Because criminal contempt is punishment, the accused “cannot be compelled to testify against himself.” *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 444 (1911). The \$5,000 fine is that kind of punishment, so the privilege applied at the April 7 hearing even though the Court styled the proceeding civil.

V. THE COURT ERRED BY NOT CONDUCTING AN ABILITY-TO-PAY INQUIRY BEFORE IMPOSING THE SANCTIONS, WHICH THE CLAUSE REQUIRES AND WHICH THE COURT PROMISED.

A. The History of the Clause Requires Considering Ability to Pay.

Writing for a unanimous Court in *Timbs*, Justice Ginsburg explained that the “historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is overwhelming,” and that its history requires fines to be “proportioned to the wrong” and not to deprive an offender of the means of living. *See Timbs v. Indiana*, 586 U.S. 146, 154, 139 S. Ct. 682, 689, 203 L. Ed. 2d 11 (2019).

That history has led a growing number of state courts to treat ability to pay as part of the excessive-fines analysis. In *City of Seattle v. Long*, the Washington Supreme Court held unanimously that a court deciding whether a fine is excessive must also weigh the person’s ability to pay, adding it as a fifth factor. 198 Wn.2d 136, 173, 493 P.3d 94, 114 (2021). On remand in *Timbs*, the Indiana Supreme Court ran a proportionality analysis that weighed the harshness of the penalty against the claimant’s circumstances, calling it “both factually intensive and dependent on the totality of the circumstances.” *State v. Timbs*, 169 N.E.3d 361, 370 (Ind. 2021). The Colorado Supreme Court read the history and precedent the same way, as “persuasive evidence that a fine that is more than a person can pay may be ‘excessive’ within the meaning of the Eighth Amendment,” and found that the “concept of ‘proportionality’ itself” supports weighing ability to

pay because “[a] fine that would bankrupt a person or put a company out of business would be a substantially more onerous fine than one that did not.” *Dep’t of Labor & Emp’t v. Dami Hosp., LLC*, 2019 CO 47, 442 P.3d 94, 101.

Counsel has not been able to locate any South Carolina case law that specifically states that the ability to pay is a required part of the analysis under the Eighth Amendment or article I, section 15. However, ability to pay is certainly a factor in criminal restitution or orders awarding attorney’s fees in Family Court. *See* S.C. Code § 17-25-322 (noting that the relative financial burden of the victim and defendant should be determined prior to an award of criminal restitution); *see also E.D.M. v. T.A.M.*, 307 S.C. 471, 476, 415 S.E.2d 812, 816 (1992) (“In determining whether an attorney’s fee should be awarded, the following factors should be considered: (1) the party’s ability to pay his/her own attorney’s fee; (2) beneficial results obtained by the attorney; (3) the parties’ respective financial conditions; (4) effect of the attorney’s fee on each party’s standard of living.”). Ms. Matney asks the Court to take up the question, in line with the weight of authority and the history of the Eighth Amendment.

B. The Failure to Hold the Promised Ability-to-Pay Inquiry Is Independently Reversible.

At the June 22, 2026 hearing, the Court indicated it would take up Ms. Matney’s ability to pay before finalizing any fee award. This was recognized by Attorney Bannister when he stated: “Thank you. Based on court’s indication from the sidebar that ability to pay will be something that we will reserve until after there is a formal finding of contempt, and we will simply reserve our position on that, and I don’t have. Further questions for Mr. Moses.” The Order says nothing about any such inquiry and makes no findings on Ms. Matney’s finances.

When a court says it will hold an inquiry and then does not, it denies the affected party the chance to put on relevant evidence and enters a monetary sanction on an incomplete record. Whether or not ability to pay is constitutionally required across the board, the Court's own representation that it would take up the issue created an obligation, and skipping it is independently reversible.

After the Court declined to hold the sanction in abeyance, Luna Shark Media is attempting to post the \$176,500 with the clerk of court. The reason for this is that Luna Shark Media does not want Ms. Matney to be out of compliance with the court's order during the course of the Court's consideration of this motion and any subsequent appeal. However, gross funds advanced by Luna Shark Media do not equate to Ms. Matney's personal ability to pay. Ms. Matney believes that her personal ability to pay and the hardships associated with paying should be taken up at a hearing.

Ms. Matney asks the Court to vacate the monetary sanctions and hold an ability-to-pay hearing. In the alternative, she asks the Court to state the governing standard for whether ability to pay is a required element under the Eighth Amendment and Article I, Section 15, and to make findings on her finances after giving her a real chance to present evidence.

VI. THE ORDER AND ITS SANCTIONS VIOLATE THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT AND ARTICLE I, SECTION 2 OF THE SOUTH CAROLINA CONSTITUTION TO THE EXTENT THEY PUNISH PROTECTED COMMENTARY ON MATTERS OF PUBLIC CONCERN.

The First Amendment, incorporated against the states, commands that the government "make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The South Carolina Constitution protects the same: "Every person may freely speak, write, and publish his sentiments on all subjects" S.C. Const. art. I, § 2. "As a general matter, . . . government has no power to

restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. ACLU*, 535 U.S. 564, 573, 122 S. Ct. 1700 (2002). And where a court imposes a content-based restriction, the Constitution “demands that . . . the Government bear the burden of showing” it is constitutional. *See United States v. Alvarez*, 567 U.S. 709, 716–17, 132 S. Ct. 2537 (2012) (plurality opinion) (quoting *Ashcroft v. ACLU*, 542 U.S. 656, 660, 124 S. Ct. 2783 (2004)). By singling out Ms. Matney’s criticism of the judiciary and her commentary on matters of public concern to support the contempt finding and the sanctions, the Court punished her, at least in part, for the content of what she said. That is presumptively unconstitutional, and the burden to justify the sanction is on the Court.

The Order admits Ms. Matney “generally has a First Amendment right to state her opinions about this case, the parties, and the Court on social media and during her podcasts.” Then it uses those very opinions — her criticism of Parker’s Defendants’ attorneys and of the Court’s orders — to reinforce the contempt finding, to judge her credibility and intent, and to conclude she showed “a lack of appropriate respect for the authority of the courts of this state.” Embedded in an order is a punishment for the content of protected speech.

Ms. Matney’s commentary is not private venting. She is an investigative journalist and podcast host. Her reporting on the *Beach v. Parker*’s cases, the Murdaugh proceedings, and the conduct of the parties and counsel here concerns matters of plain public concern — and the First Amendment is at its strongest exactly there. *See Snyder v. Phelps*, 562 U.S. 443, 451–52, 131 S. Ct. 1207 (2011) (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values.”).

The contradiction — protecting the speech in words while using it in substance — chills speech. When a court imposes a six-figure sanction on a non-party and then says her online

commentary “reinforced” its conclusions and showed a “lack of appropriate respect for the authority of the courts,” it tells Ms. Matney, and every other journalist and commentator, that criticizing a proceeding can be used against them inside that proceeding. That is the content-based, viewpoint-based penalty the First Amendment forbids.

The Court’s Footnote 14 makes it worse. By quoting Chief Justice Kittredge’s 2026 State of the Judiciary Address condemning “half-truths and false narratives that circulate on social media, podcasts, and other outlets masquerading as journalism, attacking . . . our justice system,” the Order pulls the Chief Justice’s criticism of podcast journalism directly into its assessment of Ms. Matney. The Court appears to equate the Chief Justice’s comment with Ms. Matney’s reporting.¹ Using the content of her journalism to support a contempt finding and sanctions is a content-based restriction, and it is presumptively unconstitutional.

Ms. Matney asks the Court to reconsider the finding of contempt. Ms. Matney respectfully submits that any finding should be based solely on her conduct on March 27, 2026, not on her protected speech. This issue is expressly raised under the First and Fourteenth Amendments and Article I, Section 2 of the South Carolina Constitution.

The Order Also Uses the Same Protected Commentary as Evidence of Contemptuous Intent.

The Order contradicts itself on Ms. Matney’s posts. It says on one hand: “Ms. Matney generally has a First Amendment right to state her opinions about this case, the parties, and the Court on social media and during her podcasts and those posts do not form the basis for the Court’s

¹ Although Ms. Matney recognizes the fact that proposed orders were filed in this case, Ms. Matney respectfully submits that the Court’s inclusion of Footnote 14 was unnecessary dictum. The Court’s adopted use of Footnote 14 might appear to a reasonable onlooker that the Court has some specific animus toward Ms. Matney based off of her prior protected speech. In the quote used, the Chief Justice appears to note that judges are not allowed to respond to journalist interpretations. To the extent that the Court is using Footnote 14 to respond to what it believes are incorrect narratives made by Ms. Matney and Lunashark Media, Ms. Matney would respectfully submit that this at least would raise the appearance of impropriety.

finding of contempt.” On the other, it says those same posts “evidence her intent to defy her obligation to appear at the noticed deposition location,” and that “[t]he Court’s conclusion is reinforced by Ms. Matney’s conduct and online commentary referenced in filings and exhibits which demonstrate a lack of appropriate respect for the authority of the courts of this state.”

That contradiction matters. Contempt must rest on clear and specific acts of disobedience. *Poston*, 331 S.C. at 113, 502 S.E.2d at 89. When an order uses a litigant’s criticism of the parties, counsel, or the court to “reinforce” a contempt finding and to support a deterrence fine, it turns protected speech into a ground for punishment. Saying the speech is protected and then using it anyway leaves an ambiguity that will taint the sanctions order both in the mind of the appellate court and from the general public.

Using Ms. Matney’s commentary — her public criticism of Parker’s Defendants’ litigation conduct, their counsel, and the courts — as evidence of contemptuous intent is a content-based penalty on speech. It appears that in part, the Court punished her not for what she did on March 27, but for what she said about the case and the judiciary. That is presumptively unconstitutional. *See Ashcroft v. ACLU*, 535 U.S. 564, 573, 122 S. Ct. 1700 (2002). To overcome that presumption, the Court must first find that these statements constitute a clear and present danger to the administration of justice. *See Wood v. Georgia*, 370 U.S. 375, 388, 82 S. Ct. 1364, 1372, 8 L. Ed. 2d 569 (1962) (“Thus we have simply been told, as a matter of law without factual support, that if a State is unable to punish persons for expressing their views on matters of great public importance when those matters are being considered in an investigation by the grand jury, a clear and present danger to the administration of justice will be created.”).

The fine’s stated purpose — deterrence and “respect for the law” — suggests that Ms. Matney’s commentary about the Court was a primary driving factor behind the sanction. Footnote

14 of the Order quotes Chief Justice Kittredge's 2026 State of the Judiciary Address criticizing social media commentary "masquerading as journalism." Bringing that address into the sanctions analysis blurs the line between punishing conduct and punishing speech.

The Court's reliance on protected speech was not appropriate evidence to weigh. Using protected expression as evidence of contemptuous intent violates the First Amendment no matter what the record shows, and a ruling built on that error is an abuse of discretion as a matter of law. *See Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (a trial court abuses its discretion when it commits an error of law). Because the Order's own words tie the speech to the contempt finding, the Court cannot separate the two, and the finding should be vacated in full rather than merely amended.

Ms. Matney asks the Court to vacate the contempt order because reliance on her protected commentary to support the finding and the sanctions is an error of law amounting to an abuse of discretion. If the Court will not vacate in full, she asks it to (a) identify which findings rest only on physical conduct rather than speech; (b) strike every finding that her commentary shows contemptuous intent or a lack of adequate excuse; (c) strike Footnote 14; and (d) find whether the remaining conduct alone would support both the contempt finding and the sanctions. This issue is expressly raised under the First and Fourteenth Amendments and article I, section 2 of the South Carolina Constitution.

VII. EVEN IF THIS WAS PROPERLY CIVIL CONTEMPT, THE CONTEMPT PROCEEDING VIOLATED MS. MATNEY'S RIGHT TO DUE PROCESS UNDER THE

FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3 OF THE SOUTH CAROLINA CONSTITUTION.

The Fourteenth Amendment forbids a state to “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The South Carolina Constitution says the same. S.C. Const. art. I, § 3. Due process in an indirect contempt proceeding — one based on conduct outside the court’s presence, as this is — requires, at minimum, that the accused have notice of the charge, a hearing at which she may appear with counsel, and a genuine chance to present a defense, introduce evidence, testify, and be heard on the penalty. *See Cooke v. United States*, 267 U.S. 517, 537, 45 S. Ct. 390, 395 (1925) (“rights to notice of charges, assistance of counsel, summary process, and to present a defense”); *see also Harris v. United States*, 382 U.S. 162, 167, 86 S. Ct. 352, 355 (1965) (“[A] hearing and only a hearing will elucidate all the facts and assure a fair administration of justice.”). Federal courts applying this same body of law describe the floor for due process at a contempt hearing as requiring, “[a]t most, . . . only ‘skeletal’ protections in civil contempt proceedings: a show-cause order providing notice and a hearing in which the alleged contemnor, who may be represented by counsel, can introduce evidence rebutting the allegation of contempt and testify on its own behalf.” *In re McIntosh*, 657 B.R. 279, 298–99 n.104 (Bankr. S.D. Fla. 2024) (quoting *In re McLean*, 794 F.3d 1313, 1324 (11th Cir. 2015)). Those protections “are flexible, varying with the circumstances of each case” — meaning the process actually due grows as the sanction grows more serious. *Id.* This proceeding did not clear even that floor, let alone scale up to match a \$176,500 sanction against a non-party.

A. The Missing Verified Petition Denied Ms. Matney the Threshold Notice Due Process Requires.

As explained below, Parker's Defendants' Motion for Rule to Show Cause was not verified and carried no affidavit — a fatal defect under South Carolina law for constructive contempt. *See Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (Ct. App. 2007). That defect is not a mere pleading technicality; notice of the charge is the first thing due process requires, and a verified petition is how that notice is supposed to reach the accused before she is ever brought to court to answer it. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826, 114 S. Ct. 2552, 2557, 129 L. Ed. 2d 642 (1994) (citing *Cooke*, 267 U.S. at 537). Here the sequence ran backward: the Court used Ms. Matney's own compelled testimony from the April 7 hearing to build the record for a rule that had not yet issued, issued the rule three weeks later, and then held her in contempt on it. A rule to show cause cannot supply, after the fact and through the respondent's own compelled words, the notice due process requires before she is summoned to answer at all.

B. The Sealed Billing Records Denied Ms. Matney the Hearing and the Opportunity to Present a Defense That Due Process Requires.

Due process next requires a hearing at which the accused can actually “introduce evidence rebutting the allegation of contempt.” *In re McIntosh*, 657 B.R. at 298–99 (quoting *McLean*, 794 F.3d at 1324). When the bankruptcy court in *In re McIntosh* imposed sanctions for civil contempt — including punitive sanctions — it did so only after two separate evidentiary hearings, court-ordered discovery deadlines, exchange of exhibits, and a full opportunity for the sanctioned party to cross-examine the opposing witnesses on both entitlement to and the amount of sanctions. *Id.* at 285–86, 300–01. Ms. Matney received none of that on the \$171,500 fee award. As Section I explains, the fee affidavits and itemized billing statements were filed under seal; she was never

allowed to see them, contest the rates or hours, or cross-examine the three law firms that submitted them. An opportunity to “introduce evidence rebutting the allegation” cannot exist when the evidence supporting the sanction itself is hidden from the person it will be entered against. That is not the “skeletal” process due process tolerates; as to the fee award, it is no process at all.

C. The Denied Ability-to-Pay Hearing Independently Violated the Hearing Requirement.

Finally, the Court told the parties at the June 22, 2026 hearing that it would take up Ms. Matney’s ability to pay before finalizing any award. It did not. A promised hearing that never happens is not a hearing “flexib[ly]” tailored to the circumstances, *In re McIntosh*, 657 B.R. at 298; it is no hearing on that issue at all, on a question — the size of a six-figure sanction measured against a non-party’s personal finances — that goes to the heart of both due process and the proportionality analysis above.

D. Under *International Union, United Mine Workers of America*, the Seriousness of This Sanction Required More Process, Not Less.

The Supreme Court has made clear that the process due in a contempt proceeding scales with what is at stake. Direct, in-court contempts can be handled summarily because the judge saw what happened and the risk of an erroneous finding is low. *International Union, United Mine Workers of America*, 512 U.S. at 831–33. But “[s]till further procedural protections are afforded for contempts occurring out of court,” and “[f]or a discrete category of indirect contempts . . . civil procedural protections may be insufficient” because “[c]ontempts involving out-of-court disobedience to complex [proceedings] often require elaborate and reliable factfinding.” *Id.* at 833–34, 114 S. Ct. at 2560–61. This is exactly that category. The conduct at issue happened outside the courtroom; the fee award turns on parsing itemized billing from three law firms; the social

media evidence requires authentication and context; and the total sanction — \$176,500 against a non-party journalist — is serious by any measure, as Section III’s proportionality analysis shows. *International Union, United Mine Workers of America* instructs that this combination of seriousness and complexity calls for more careful, adversarial process, not less. Whatever efficiency the Court gained from sealed billing, an unverified petition, and untested exhibits, “considerations of efficiency must give way to the more fundamental interest of ensuring the even-handed exercise of judicial power.” *Id.* at 839, 114 S. Ct. at 2563 (quoting *Bloom v. Illinois*, 391 U.S. 194, 209, 88 S. Ct. 1477, 1486 (1968)).

Ms. Matney asks the Court to vacate the contempt finding and the sanctions imposed on this record. In the alternative, she asks the Court to (a) give her and her counsel access to the sealed fee records and hold the hearing on their reasonableness described in Section I; (b) hold the ability-to-pay hearing it promised; (c) strike the April 7, 2026 hearing testimony; and (d) make findings establishing that the process actually used met, at minimum, the notice, hearing, and opportunity to be heard that due process requires in a civil contempt proceeding.

VIII. THE \$171,500 FEE AWARD MUST BE VACATED OR CUT BECAUSE COMPENSATORY CONTEMPT FEES REACH ONLY LOSSES CAUSED BY THE MISSED DEPOSITION, NOT THE ATTORNEY'S FEES RELATED TO MOTIONS PRACTICE.

The Order awards \$171,500 in fees and costs although Ms. Matney was never afforded the ability to actually argue or know what is being billed for. It is hard to believe that such fees are reasonable for a deposition that went forward 11 days later.

Compensatory contempt fees are remedial. They repay the complainant for losses the contempt caused — nothing more. *Poston*, 331 S.C. at 114, 502 S.E.2d at 90; *Miller v. Miller*, 375

S.C. at 463, 652 S.E.2d at 764. They are not a general fund for every motion the Court found unpersuasive. *See Matter of Est. of Combis*, 439 S.C. 485, 497, 888 S.E.2d 1, 7 (Ct. App. 2023) (remanding compensatory contempt fee award on causation grounds; but seeming to address compensatory contempt fees in the context that they must be attributable to the contemptuous conduct).

It is difficult to see how this award is tied to the failure to appear at the deposition. Worse, much of the fees are likely unnecessary and duplicative — where multiple lawyers triple-billed the same work. Multiple categories of work should not be considered as part of the award, including the following:

A. The Motion to Quash — Filed as a Matter of Right.

The Order itself says Ms. Matney’s Motion to Quash “was filed as a matter of right.” A filing made as a matter of right is not contempt. A non-party witness may file a motion to quash. The Court cannot call a filing proper and then bill Ms. Matney for making Parker’s Defendants answer it. Fees for the Motion to Quash must come out.

B. The Motion for Reconsideration — It Predates the Contempt.

Ms. Matney’s Motion for Reconsideration of the quash ruling was filed and decided before March 27, 2026 — before any contempt. Fees to fight a motion that predates the conduct cannot be caused by that conduct. Pre-contempt motion practice is not compensable here.

C. The Emergency Motion to Set Deposition Location — It Needs Its Own Authority.

Ms. Matney’s Emergency Motion to Set Deposition Location asked the Court for guidance on a disputed safety and location question before the deposition. Whatever the Court thought of its timing, a non-party’s request for court direction is not contempt. Fees for answering that motion need some authority beyond the contempt power. The Order names none.

Ms. Matney asks the Court to vacate the \$171,500 award, or to cut it to fees caused by the March 27, 2026 failure to appear and by the necessary enforcement that followed. In the alternative, she asks the Court to make itemized causation findings for each category.

D. Denied Motion Practice Cannot Support the Fee Award Absent Independent Authority.

The Order says “all of Ms. Matney’s follow-on filings lacked merit” and that her “multiple motions and supporting memoranda have required the Parker’s Defendants to devote substantial time and resources responding to arguments that lack merit and have previously been adjudicated.” That folds losing motion practice into the contempt sanction, and it should not.

A denied motion is not contempt. Denial does not turn a filing into a fee-shifting event without some independent authority — Rule 11, a statute, or the like — and the findings that authority requires. The contempt sanction reaches losses caused by willful disobedience of the subpoena, not every motion the Court found unpersuasive.

If the award includes fees for answering Ms. Matney’s motions because those motions lacked merit, it is a sanction for frivolous filing — and in South Carolina that is governed only by Rule 11, SCRCF, and the court’s inherent authority, each with its own procedure. Parker’s Defendants never moved for Rule 11 sanctions. The Court never told Ms. Matney her motions were being weighed for sanctions under any independent authority. She never had a chance to answer that charge before the award issued. The steps Rule 11 requires — a noticed motion, a finding of frivolousness, and a chance to respond — were skipped by running the sanction through the contempt power instead. That skips both Rule 11 and the Due Process Clause of the Fourteenth Amendment, which independently requires notice and an opportunity to be heard before a court imposes a financial penalty for litigation conduct.

Ms. Matney asks the Court to amend the Order to (a) delete or narrow findings that treat denied motions as independently supporting contempt or the fee award; (b) if fees for any motion are to be awarded, state the independent authority and make the findings it requires; and (c) if the award includes fees for answering any of her motions on frivolousness grounds, vacate that part, because no Rule 11 motion was filed, no notice was given, and she had no chance to respond.

IX. THE FEE AWARD LACKS THE FINDINGS NEEDED FOR MEANINGFUL APPELLATE REVIEW.

Apart from its scope, the award does not contain findings a reviewing court could use. The Order says only that the Court awarded the fees “after applying the Miller and Poston factors” and that the number “represents a 44.7% percent reduction of the total fees and costs originally requested.” It does not set out (a) the hourly rates of each of the three firms, or whether those rates are reasonable in this market; (b) whether it was proper for all three firms to bill for the same work — communications among themselves, with the Court, and at hearings — and other duplicative and unnecessary billing; (c) the hours allowed and disallowed for each firm, and the reason for any cut; (d) any category-by-category division between contempt-enforcement fees and fees for merits, privilege, or losing arguments; (e) whether the award is compensatory rather than punitive given everything it includes; or (f) the basis for the 44.7% reduction, which without findings is a conclusion, not a finding.

South Carolina courts review contempt sanctions for abuse of discretion and reverse when the order lacks evidentiary support or adequate findings. *See Taylor v. Taylor*, 434 S.C. 307, 863 S.E.2d 335 (Ct. App. 2021) (reversing a finding of contempt). A percentage cut stated without analysis tells the Court of Appeals nothing about whether the award is reasonable, compensatory, and tied to the contempt.

Ms. Matney asks the Court for a hearing to determine reasonable attorney's fees and/or at a minimum that this Court amend the Order to make specific findings on rates, hours allowed and disallowed, duplication among the three firms, category-by-category causation, and the compensatory rather than punitive character of the award. If the sealed materials cannot support those findings without Ms. Matney's participation — and they cannot, as Section I explains — she asks for the access and hearing described in Section I.

X. THE WILLFULNESS FINDING SHOULD BE RECONSIDERED BECAUSE THE ORDER DOES NOT FULLY ADDRESS “ADEQUATE EXCUSE” UNDER RULE 45(e), SCRCP.

Rule 45(e), SCRCP treats a failure to obey a subpoena “without adequate excuse” as contempt. The Order finds Ms. Matney willfully failed to appear, stressing that she could have traveled and that filing a motion does not stay compliance. Ms. Matney agrees a motion alone does not excuse compliance. But the adequate-excuse inquiry is broader than the Order allows, and the Order leaves out both facts and law.

Contempt in South Carolina requires clear and convincing proof of a specific intent to disobey the law. *Miller*, 375 S.C. at 454, 652 S.E.2d at 759-60. The Order treats “she could have traveled to the location” as if it were “she willfully defied the court,” without addressing what the record shows.

First, Ms. Matney was in Bluffton on March 27, 2026 — the city named in the subpoena. She appeared by Zoom from the office of her attorney of record, a lawyer in good standing; she told Parker's Defendants where she was and that she was ready; and she waited past noon after explaining a real and objective fear for her safety. Being in the right city, ready to go, and in active

contact with the other side looks like a conditional appearance and de facto compliance under the Rules — not the conduct of someone who simply refused to take part.

Second, adequate excuse has to account for the fact that Ms. Matney is a non-party witness. What a party owes a court order is not the same as what a non-party owes a subpoena. The Order does not draw that line.

Third, Ms. Matney had an Emergency Motion pending on the location dispute when she was due to appear. The Court later denied it, but its pendency — with her presence in Bluffton and her readiness to proceed at a nearby secured location — bears directly on whether she meant to defy the Court.

Ms. Matney asks the Court to vacate the contempt finding. In the alternative, she asks the Court to make specific findings on (a) whether her presence in Bluffton, her Zoom appearance, and her readiness to proceed nearby amount to conditional compliance or adequate excuse under Rule 45(e); (b) the adequate-excuse standard for a non-party witness; and (c) why her conduct on March 27, taken as a whole, meets clear-and-convincing proof of willful disobedience rather than a disputed conditional appearance.

Ms. Matney's Safety Concerns Bear Directly on Adequate Excuse and Willfulness.

The Order rejects Ms. Matney's safety concerns as unsupported and not credible, finding she "was unable to articulate any specific, concrete safety threat unique to the noticed location." Ms. Matney respectfully requests that the court reconsider its factual findings concerning this. Ms. Matney respectfully submits that adequate excuse under Rule 45(e) should not demand proof of an actual, specific, concrete physical threat before a non-party's safety concerns can count.

The Order asks whether Ms. Matney proved Parker's Defendants caused her safety concerns. That is the wrong question. The question for contempt is narrower: whether her stated

concerns, her emergency request for guidance, her hiring of private security, and her presence in Bluffton at a nearby secured location add up to clear-and-convincing proof that she meant to defy the Court. The Order's own facts — that she showed up in Bluffton, hired security, had counsel present, and appeared by Zoom — point to someone trying to comply without compromising her own safety.

Ms. Matney asks the Court to amend the Order to (a) address the adequate-excuse standard under Rule 45(e) for a non-party witness; (b) make findings on why her conduct on March 27 as a whole — her presence in Bluffton, her security, her contact with Parker's Defendants, and her readiness to proceed nearby — meets clear-and-convincing proof of willful disobedience; and (c) address whether her pending emergency motion and stated safety concerns, even if rejected, negate the specific intent contempt requires.

XI. THE CONTEMPT FINDING SHOULD BE RECONSIDERED BECAUSE THE MOTION THAT STARTED IT WAS NOT VERIFIED OR SUPPORTED BY AFFIDAVIT, AS CONSTRUCTIVE CONTEMPT REQUIRES.

A. The Missing Verification Is a Fatal Defect.

South Carolina separates direct contempt — conduct in the court's presence — from constructive contempt — conduct outside it. The difference controls how the proceeding must begin. Constructive contempt must be initiated by affidavit or verified petition. *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (Ct. App. 2007) (failure to support a rule to show cause by affidavit or verified petition is a fatal defect for constructive contempt).

Ms. Matney's alleged contempt — not appearing at a noticed deposition location — is constructive contempt. It happened outside the courtroom. Parker's Defendants' Motion for Rule

to Show Cause was not verified and carried no affidavit. Ms. Matney objected to that defect on May 13, 2026, before the May 15, 2026 merits hearing.

The Order overrules the objection on two grounds: that the Rule to Show Cause issued from Ms. Matney's own sworn testimony at the April 7, 2026 hearing, and that she waived the objection by not raising it on April 7. Both are wrong, and the defect is jurisdictional and cannot be waived.

Using a respondent's compelled testimony at a later hearing to supply the missing verification confuses two different things. The verified petition protects the respondent before she is ever brought to court — it is how the court decides whether there is enough to issue a rule at all. A merits hearing cannot reach back and supply an initiating pleading the court never had. The requirement is not a technicality; it forces the moving party to swear to its facts before it can drag a witness in to testify. Here the Court used Ms. Matney's own compelled testimony to build the basis for the very rule that led to her being held in contempt. A contempt proceeding cannot pull itself into jurisdiction by the respondent's own words. The error is reversible on its own, whether or not the facts might have supported contempt on a proper petition.

Ms. Matney asks the Court to vacate the contempt order for this incurable defect. In the alternative, she asks the Court to (a) state whether it found direct or constructive contempt; (b) identify the authority for using sworn merits testimony in place of a verified petition; and (c) make findings sufficient for appellate review.

B. The April 7 Hearing Should Never Have Happened; It Was an Attempt to Cure the Missing Verification by Taking Testimony.

The verified-petition requirement is not a formality that a later hearing can paper over. It is a threshold. Either the Parker's Defendants' petition for a rule to show cause was supported by

a verified pleading or an affidavit, or it was not. If it was, no hearing was needed to decide whether the rule should issue. If it was not — and it was not — the petition was fatally defective, and the remedy was to deny it, not to convene a hearing so the moving party could build the sworn factual basis it had failed to plead. *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (Ct. App. 2007).

The April 7th hearing was an improper attempt to cure the error. The Court said so: “We’re not here on contempt today. We’re here making a record as to whether or not a rule to show cause should be issued.” (April 7, 2026.MP4 at Approximately 1:21:40.) And Parker’s Defendants’ counsel said so: he announced that they “needed to lay a foundation for the Rule to Show Cause.” (April 7, 2026.MP4 at Approximately 21:40.) “Lay a foundation” is the tell. A verified petition either states a sufficient basis on its face or it does not; a movant does not get to call witnesses — least of all the respondent — to manufacture the basis its petition lacked.

Allowing that testimony turned the process inside out. The verified petition is supposed to come first, so that the respondent is never hauled in and questioned until the moving party has committed, under oath, to specific facts. Here the order was reversed: Ms. Matney was called to the stand so that her answers could supply the foundation for a rule that had not yet issued, and the Rule to Show Cause then issued weeks later, on April 30, 2026, on the strength of that testimony. A movant cannot cure a defective petition with the respondent’s own compelled words, and a court cannot let it do so. *See People v. Covington*, 395 Ill. App. 3d 996, 1008, 917 N.E.2d 618, 628–29 (Ill. App. Ct. 2009) (a rule to show cause that “impermissibly shifted the [movant’s] burden of proof” onto the respondent required vacatur). The correct course was to deny the unverified petition. Because the April 7 hearing existed only to escape that result, the testimony taken there — and the rule built on it — cannot support the contempt finding.

Ms. Matney asks the Court to find that the April 7 hearing was an improper vehicle to cure the missing verification, that the testimony taken there could not supply the sworn factual basis the petition lacked, and that the Rule to Show Cause built on that testimony cannot stand.

C. The Waiver Finding Is Wrong on the Record.

The Order finds Ms. Matney waived the verification objection by not raising it on April 7, 2026. The record says otherwise. Ms. Matney flagged the missing verification in her response to the motion for rule to show cause on April 6, 2026. The April 7 hearing was about whether a Rule to Show Cause should issue — not the merits of contempt. At the beginning of the hearing on April 7, 2026, the motions were referred to on the record. Attorney Bannister even went so far as to say they needed to lay a foundation for the Rule to Show Cause. The Rule to Show Cause did not issue until April 30, 2026. On April 7th, 2026, the court stated, “We're not here on contempt today. We're here making a record as to whether or not a rule to show cause should be issued.” Clearly the court was aware of the fact that Ms. Matney was objecting to contempt for the missing verification, otherwise the hearing on April 7th, 2026, would not have been necessary.

Ms. Matney objected to the defect on May 13, 2026, two days before the May 15 merits hearing and after the rule had issued. That is the right time to raise it — before the merits hearing, not before the rule even exists. And she did not put herself on the stand on April 7. The Court let Parker's Defendants call her; her own counsel did not.

Ms. Matney asks the Court to amend the Order to make specific findings on (a) the exact date the Rule to Show Cause issued; (b) the pleading that supported it; (c) when Ms. Matney first had notice of the defect; and (d) the basis for finding waiver of an objection made before the merits hearing.

XII. THE RETAINED-JURISDICTION PROVISION SHOULD BE CLARIFIED TO PROTECT DUE PROCESS IN ANY FUTURE SANCTIONS.

The Order states that “[t]he Court retains jurisdiction to impose such additional sanctions as may be necessary to ensure compliance with this Order.” As written, that leaves open whether future sanctions could issue without new notice, a new chance to be heard, and findings under the civil contempt standard. *Poston* makes clear that due-process protections attach to contempt proceedings, and they matter more, not less, when a sanction is punitive. Leaving the question open invites confusion and risks a claim that Ms. Matney waived due-process objections that no one has yet ruled on.

Additionally, if Ms. Matney is provided a proper procedure in which to argue that the award of attorneys' fees was improper, Ms. Matney reserves the right to argue that recusal is appropriate due to the fact that this Court has pre-judged the amount of attorney's fees it sees appropriate in this case. Ms. Matney would argue that she would have the right to raise such an issue if and when she reviews the documents which have been sealed and determines that this Court has erred.

CONCLUSION

For these reasons, Ms. Matney respectfully asks the Court to grant this Motion to Reconsider and to:

1. Vacate the \$171,500 fee award, or at a minimum give Ms. Matney and her counsel full access to the sealed fee affidavits and billing records and hold a hearing on their reasonableness before any fee is awarded;
2. Vacate the contempt order in full based on the defect in the initiating motion;
3. Vacate the \$5,000 fine as punitive — imposed to deter rather than to coerce compliance with an obligation Ms. Matney had already met — in violation of the Excessive Fines

Clause of the Eighth Amendment and article I, section 15 of the South Carolina Constitution;

4. In the alternative, reduce the fee award to fees directly and causally attributable to the March 27, 2026 failure to appear and the necessary enforcement that followed;
5. Amend the Order to separate any compensatory sanctions from punitive ones, with findings on the basis and purpose of each;
6. Amend the Order with specific findings on Rule 45(e) adequate excuse, willfulness, and the causation and reasonableness of the fee award, and on the verified-petition issue;
7. Amend the Order to remove or narrow findings that rely on protected social media commentary, lack of respect for the court, or general criticism as evidence of contempt or a basis for sanctions;
8. Clarify the retained-jurisdiction provision to require new notice and a new hearing before any future sanction;
9. Recuse itself from any finding related to Ms. Matney if the Court finds that its previous order raises the appearance of impropriety; and
10. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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