IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
Atlanta Division

JAMES B. STEGEMAN,
JANET D. MCDONALD,
Plaintiffs

vs.

SUPERIOR COURT STONE MOUNTAIN JUDICIAL CIRCUIT;
SUPERIOR COURT JUDGE CYNTHIA J. BECKER;
GEORGIA POWER COMPANY;
BRIAN P. WATT, Esq.;
SCOTT A FARROW, Esq.,
Defendants

CIVIL ACTION
FILE NO: 1:08-CV-1971

RULE 60(b) RELIEF FROM JUDGMENT

PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT AND MOTION TO RECUSE JUDGE WILLIAM S. DUFFEY, JR.

COMES NOW, Plaintiffs in the above styled case and files ***Plaintiffs' Brief in Support of Motion for Relief From Judgment Pursuant to Fed. R. Civ. P. Rules 60(b)(2), (3), (4) and (6), and Motion to Recuse Judge William S. Duffey, Jr.***

Brief in Support is filed contemporaneously herewith.

Respectfully submitted, this 31st day of March, 2010

By: _____

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
Atlanta Division

JAMES B. STEGEMAN, **JANET D. MCDONALD,** **Plaintiffs** **vs.** **SUPERIOR COURT, et., al.,** **Defendants**	**CIVIL ACTION** **FILE NO: 1:08-CV-1971-WSD**

CERTIFICATE OF SERVICE

I Certify that I have this 31st day of March, 2010, served a true and correct copy of the foregoing ***Plaintiffs' Brief in Support of Motion for Relief From Judgment Pursuant to Fed. R. Civ. P. Rules 60(b)(2), (3), (4) and (6), and Motion to Recuse Judge William S. Duffey, Jr.*** upon Defendants, through their attorney on file if known, by causing to be deposited with U.S.P.S., First Class Mail, proper postage affixed thereto addressed as follows:

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IN THE UNITED STATES DISTRICT COURT
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JAMES B. STEGEMAN, **JANET D. MCDONALD,** **Plaintiffs** **vs.** **SUPERIOR COURT STONE MOUNTAIN JUDICIAL CIRCUIT;** **SUPERIOR COURT JUDGE CYNTHIA J. BECKER;** **GEORGIA POWER COMPANY;** **BRIAN P. WATT, Esq.;** **SCOTT A FARROW, Esq.,** **Defendants**	**CIVIL ACTION** **FILE NO: 1:08-CV-1971** **RULE 60(b) RELIEF FROM JUDGMENT**

PLAINTIFFS' BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT
AND MOTION TO RECUSE JUDGE WILLIAM S. DUFFEY, JR.

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The Federal Rules of Civil Procedure allow relief from Judgment in the

following circumstances:

> **Rule 60. Relief from Judgment or Order**
>
> (b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) the judgment is void;
>
> (6) any other reason justifying relief from the operation of judgment.

BRIEF PROCEDURAL BACKGROUND

Plaintiffs[1] filed a ***Verified***, prima facie Complaint (Doc 1)[2] w/Exhibits (#'s 1-13) in US District Court for due process and equal protection violations, Civil and Constitutional Rights Violations under color of law or color of authority, and other causes of action against Superior Court Stone Mountain Judicial Circuit,

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[1] Both Plaintiffs proceeding ***pro se,*** Plaintiff Mr. Stegeman is both 100% mentally disabled and 100% physically disabled, receives **Supplemental Security Income.** Judge Duffey has repeatedly refused to acknowledge that Mr. Stegeman is a member of a protected class. Of the three cases in which Mr. Stegeman has been a Plaintiff in front of Judge Duffey, Jr., Judge Duffey has mentioned only one time that Mr. Stegeman is disabled; that was when he Granted Motion to Appeal In Forma Pauperis. In that Ruling, Judge Duffey intentionally lied; he stated that Mr. Stegeman receives Social Security disability, rather than the much more difficult to obtain Supplemental Security Income. Judge Duffey falsified this important fact as a means of justifying his refusal to appoint legal counsel to a mentally disabled individual, as required to ensure protection of their Rights.

[2] (Doc 1) refers to Docket Report #1, the docket will be referred to accordingly hereinafter throughout.

Superior Court Judge Cynthia J. Becker[3], Georgia Power Company, Brian P Watt, and Scott A Farrow.[4]

All parties were properly served with Summons and Complaint June 10, 2008 (Doc 4,5,6). The following day, Judge Becker, in a retaliatory act, dismissed with prejudice the Superior Court complaint against Georgia Power, leaving the counterclaim intact.[5]

June 17, 2008 the Superior Court Defendants, filed ***unverified*** Motion (Doc 2) to Dismiss under Rule 12(b) 1 & 6 of the Fed. R. Civ. P. June 27, 2008, Georgia Power Defendants pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) filed ***unverified*** Motion to dismiss with prejudice (Doc 3), w/Exhibits[6] (Ex 1-6). Plaintiffs responded to the Superior Court defendants on June 30, 2008 (Doc 8

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[3] Referred to hereinafter as "Superior Court Appellees" or "Superior Court" or if referencing only Judge Becker, "Judge Becker"

[4] Referred to hereinafter as "Georgia Power Appellees", or if referencing only Brian P. Watt and/or Scott A. Farrow referred to as "Troutman Sanders", or "Watt", or "Farrow".

[5] Under Georgia statute, without bringing Plaintiffs' property under jurisdiction of the Court (in rem), the Court lacked personal and subject matter jurisdiction; further, Judge Becker had dismissed with prejudice, which means the case was decided on the merits and any further proceedings would have been res judicata.

[6] The ***unverified*** Memorandum of Law told Judge Duffey that even though there were Exhibits attached, to remember that he could not consider the Exhibits when Ruling; obviously there had been ex parte communication, and they didn't want a Summary Judgment; since Judge Duffey's Ruling addressed credibility of "evidence" (which only a Jury would have been allowed to determine), Summary Judgment should have been triggered, but wasn't.

w/attachments); and to the Georgia Power defendants July 11, 2008 (Doc 9 w/attachments).

July 25, 2008 Plaintiffs filed ***Certificate of Interested Persons*** (Doc 10), ***Preliminary Report and Discovery Plan*** (Doc 11) and ***Initial Disclosures*** (Doc 12). July 31, 2008 Plaintiffs filed ***Motion and Brief to Recuse or Disqualify Judge Duffey*** (Doc 13); and filed ***Reply*** (Doc 18) to defendants' Responses to Recusal (Docs 14, and 17).[7] Two weeks after defendants failed to file their discovery docs. Plaintiffs asked the Court for sanctions[8]. Plaintiffs requested the same sanction Judge Duffey had threatened Plaintiffs with in the Wachovia suit.

August 8, 2008, without responding to Plaintiffs' request for sanctions, Superior Court defendants' filed Motion to Stay Proceedings Pending Resolution of Defendants' Motion to Dismiss (Doc 15), Georgia Power Appellees filed Motion to Stay (Doc 16); Plaintiffs filed Responsive Objections (Docs 19, 20) August 8, 2008.

August 26, 2008 Duffey Dismissed under Younger Abstention and Denied ***Motion to Recuse*** in the same Order, thereby Denying Plaintiffs the Right to

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[7] Georgia Power Appellees filed Notice of Joinder on Superior Court Appellees' Response

[8] Local Rules Pre-Trial Instructions, LR 26.11, LR 84.1; LR 3.3 (excluding governmental parties); and LR16.1, using the words "shall be" and "must" It states nowhere that parties filing Motions to Dismiss are exempt from the filings (R2-19-1,2; R2-20-1,2)

Appeal the Denial of Recusal (Doc 21). September 9, 2008 Plaintiffs moved for ***Reconsideration*** (Doc 23); Defendants Responded September 15, 2008 (Doc 24, 25); Plaintiffs Replied September 24, 2008; Judge Duffey, Jr. Denied the Motion on September 26, 2008.

Plaintiffs filed ***Notice of Appeal, Motion to Proceed on Appeal in Forma Pauperis*** October 24, 2008 (Doc 29, 30); November 25, 2008, 11th Circuit Court of Appeals sent a letter to District Court inquiring about the lack of ruling on Forma Pauperis (Doc 33); Duffey Granted Forma Pauperis December 23, 2008 (Doc 34). The last Docket Report entry was March 31, 2009 (Doc 39).

STATEMENT OF FACTS AND CITATIONS OF AUTHORITY

Plaintiffs filed a ***verified prima facie*** complaint in District Court after a Superior Court action against Georgia Power had become so riddled with fraud, fraud upon the Court, continuous violations of due process and Plaintiffs' Rights under color of law, that it was obvious justice would not be served.

The complaint filed in District Court clearly stated that the case was brought due to illegal acts, fraud upon the court (Doc 1 pgs 18, 20), as well as due process violation, civil and constitutional rights violation under color of law or color and a covert conspiracy to have the case in Superior court dismissed for a fictional discovery dispute (Doc 1 pgs 2,3,19,20,21).

I. THE SUPERIOR COURT ACTION

In Superior Court, Plaintiffs filed a ***Verified prima facie complaint*** against Georgia Power for an ongoing easement dispute, based on documents provided by Georgia Power.[9] Georgia Power filed Verified Answers in which they claimed to have a legal, valid deed from 1941 granting them easement rights over Plaintiffs' property (Doc 3, Ex 5 pgs 30-¶ 5, 31-¶¶s 6,7,8; pg 34-¶ 22).

The fraudulent documents that Georgia Power submitted with their answers in both Superior and District Courts are not Notarized, Certified, or authenticated, does not possess the required "**dated with the year, month, day, hour, and minute accurately stated**" as required before it can be filed in County records as shown by O.C.G.A. §44-2-121[10] (Doc-1-Ex#3). The fraudulent documents have never been filed/recorded in County records as required.

Real Property in Georgia, including easement disputes, are governed by the "Land Registration Laws"[11], requires the proceedings to be in rem,[12] O.C.G.A.

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[9] . The documents consist of handwritten 1937 easement document, 1937 Power/Railway map, handwritten 1941 easement document; None of the easement documents had a Notary Seal, or legal according Georgia law. Only the map (which did have a seal) was a legal binding agreement under Georgia law.

[10] O.C.G.A. §44-2-121: Every entry made in the register of decrees of title, in the title register, or upon the owner's certificate under any of the provisions of this article ***shall be signed by the clerk*** and ***dated with the year, month, day, hour, and minute accurately stated.***

[11] O.C.G.A. §44-2-40

§44-2-100 "… auditor, who shall be known as the examiner…" must be appointed. "The Land Registration Law" O.C.G.A. §44-2-40; Judge Becker violated procedures, rules, statutes and her Oath Of Office, by refusing to abide by the law.

The ***clerk*** "has the Sheriff take steps necessary to bring the property under jurisdiction of the Court, …in rem" see O.C.G.A. §44-2-61, and O.C.G.A. § 44-2-72; [13] the clerk issues process for the Sheriff to serve to show cause[14]. Superior Court failed to bring the property under the jurisdiction of the Court; an examiner was never appointed, Sheriff never contacted.

The examiner examines title and related documents,;…makes a preliminary report consisting of: (1) Extracts from the records; (2) A statement of the facts

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[12] O.C.G.A. §44-2-61 The proceedings … for the registration of land and all proceedings in the court in relation to registered land shall be proceedings in rem against the land

[13] O.C.G.A. §44-2-61 The proceedings … for the registration of land and all proceedings … in relation to registered land shall be proceedings in rem against the land;

O.C.G.A. § 44-2-72(a) A notice… delivered by the clerk to the sheriff … shall, within 30 days… post the same upon the land; (c) the sheriff shall … ascertain the identities of the occupants. … make an official return to the court; (e) After the sheriff … posted... made his return to the court …, the land shall be deemed to have been seized and brought into the custody of the court…; and the court's jurisdiction in rem and quasi in rem shall attach thereto for purposes of land registration proceedings…

[14] O.C.G.A. § 44-2-67(a)(1) … the clerk shall issue a process directed to the sheriffs … requiring all …persons "whom it may concern" to show cause … not less than 40 nor more than 50 days … why the prayers … should not be granted and why the court should not proceed to judgment in such cause.

relating to the possession of the lands; (3) The names and addresses of all persons interested in the land as well as all adjoining owners. [15]

Georgia statute states that once the above statutes have been complied with, **only the examiner** [16], "**shall** proceed to hear evidence and make up his final report to the court" O.C.G.A. §44-2-102. The ***examiner*** sets a time and place for hearing, where ***the examiner*** would then interview "witnesses, production of books and papers, hear all lawful evidence submitted; then within 15 days present to the clerk his findings. Any of the parties … may file exceptions to the conclusions of law or of fact or to the general findings …within 20 days... The **clerk shall** thereupon notify the judge that the record is ready. If the parties disagree, they can request a trial with or without a jury O.C.G.A. §44-2-103.

There are no: discovery disputes, Motions to Compel, depositions; the action **cannot** be dismissed for default.[17] Judge Becker violated Georgia laws.

The only explanation for an examiner not being appointed is that the 1937 easement document and the 1937 Power/Railway map would have been produced

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[15] O.C.G.A. §44-2-101 …duty of the examiner to make up a preliminary report containing an abstract of the title … that can reasonably be obtained by him

[16] The Judge presides/acts over anything, certainly not a fictitious Motion to Compel; she has no part concerning the evidence or witnesses.

[17] O.C.G.A. §44-2-81 No decree shall be rendered by default and without the necessary facts being shown.

and inspected (Doc 8 pg -3). The Power/Railway map, a binding contract[18] shows the power poles crossing the road before reaching Plaintiffs' property. Georgia Power Supervisor Ralph Hall, provided Plaintiffs the map, verified in a letter from attorney Watt to Georgia Power in house counsel Kevin Pearson (Doc 1 pg-11; Doc 1 Ex6 pg-2) (Doc 8 pg-3).

Georgia Power had provided all the documents Plaintiffs used in both Superior Court and District Court. In Superior Court, Georgia Power's Verified Answers had attached the fraudulent 1941 easement doc., they swore that they had performed a thorough investigation and they possessed a valid legal easement; they knowingly, willingly wantonly, with intent to defraud, perjured themselves.

After Judge Duffey's Dismissal of the case, newly discovered evidence was presented in the Superior Court action, by an Affidavit by Attorney Marcus Calloway.[19] In support of Georgia Power's Motion for Summary Judgment, Calloway swore that ***prior*** to the incident that led to the Superior Court case, he

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[18] O.C.G.A. §44-2-29 Any plats or any blueprints, tracings, photostatic copies, or other copies of plats recorded prior to March 29, 1937, …are declared to have been duly recorded; and the reference in any deed, mortgage, or other instrument executed prior to March 29, 1937, to the boundaries, metes, courses, or distances of the real estate delineated or shown on any plat or on any blueprint, tracing, photostatic copy, or other copy of a plat recorded prior to March 29, 1937, … shall have the same effect as if the boundaries, metes, courses, or distances of the real estate were specifically set forth in the deed, mortgage, or other instrument.

[19] "Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." ***H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co.***, 536 F.2d at 1119"

had performed an examination of the title and easement documents at Georgia Power's request.

Georgia Power knew ***before*** making up slanderous/libelous lies and damaging Plaintiffs' property and reputations that they had no legal right to be at Plaintiffs' property; they knowingly, willingly, wantonly, and maliciously damaged Plaintiffs' property, reputations, and harmed Plaintiffs and their property.

Attorney Calloway's Affidavit clearly stated that there was also a second contact from Georgia Power to do further study into Land Lots, and property in November well before Georgia Power filed Verified Answers in Superior Court.

Both incidents were secreted from Plaintiffs. The Supreme Court of Georgia has long held that "the mere silence of the party committing fraud", "is treated as a continuation of the original fraud.... Constituting a fraudulent concealment" see ***American Nat. Bank v. Fidelity & Deposit Co***. 131 Ga. 854 (68 SE 622) (1908). ("Where the basis of an action is actual fraud, the mere silence of the party committing it is treated as a continuation of the original fraud and as constituting a fraudulent concealment") "As a general rule, a plaintiff relying on the doctrine of fraudulent concealment must show affirmative actions by the defendant constituting concealment. ...." ***Hill v. Texaco, Inc.***, 825 F.2d 333, 335 (11th Cir. 1987) (citations omitted).

Fraudulent concealment is described by Black's Law Dictionary as "The

affirmative suppression or hiding, with the intent to deceive or defraud, of a material fact or circumstance that one is legally (or sometimes morally) bound to reveal."[20]

Rather than use the power of condemnation granted them by the Georgia General Assembly, Georgia Power illegally took Appellant's land through deception, a crime in Georgia. See ***Avery v. Chrysler Motors Corporation, et., al.,*** 214 Ga. App. 602 (448 SE2d 737) (1994):

> "Theft by deception is committed when a person "obtains property by any deceitful means or artful practice with the intention of depriving the owner of the property." OCGA 16-8-3 (a). "A person deceives if he intentionally: (1) Creates or confirms another's impression of an existing fact or past event which is false and which the accused knows or believes to be false; [or] (2) Fails to correct a false impression of an existing fact or past event which he has previously created or confirmed."

A. <u>Summary Judgment</u>

A case Dismissed with prejudice is equivalent to having been decided on the merits, it concludes the action. With Plaintiffs no longer a party to the action, the only party was the defendant. Neither the Georgia Power Defendants, nor Superior Court defendants had standing to sue or defend Plaintiffs' real property in Superior Court; thereby the Court lacked both subject matter and personal jurisdiction. Becker refused to allow Plaintiffs to participate in the Summary

[20] ***Black's Law Dictionary*** (7th ed.) page 282.

Judgment proceedings and/or file Response. The Order granting Summary Judgment to Georgia Power is not merely voidable, but it is VOID.

Further, the Order Granting Georgia Power Summary Judgment, was Ruled on and filed at 9:12 AM the very same morning the hearing was set to begin at 9:30 AM a full eighteen minutes before Court began.

Plaintiffs' land documents currently show that they sold their property for $0.00. The documents that Georgia Power used in the Court cases were not filed along with Judge Becker's Order, the acts performed by Judge Becker and Georgia Power are illegal.

B. Prescriptive Easement

Judge Becker granted a prescriptive easement, going against The Supreme Court of Georgia's Rulings on Georgia Power and prescriptive easements.

OCGA § 44-5-161 provides:

> (a) In order for possession to be the foundation of prescriptive title, it:
> (1) Must be in the right of the possessor and not of another;
> (2) Must not have originated in fraud …
> (3) Must be public, continuous, exclusive, uninterrupted, and peaceable; and
> (4) Must be accompanied by a claim of right.
> (b) Permissive possession cannot be the foundation of a prescription until an adverse claim and actual notice to the other party.

Plaintiffs bought the property August 1994, right away they erected an eight (8) to (10) ten foot tall combination of chain link, privacy, and granite along with

a gated entry around the entire property. Certainly a large fence encompassing an entire property with a gated entry is not "peaceable", "uninterrupted", "exclusive", "continuous", and/or "public" except when viewed in the favor of Plaintiffs/Appellants who succeeded to "prevent occupation by another". See ***Georgia Power Co. v. Irving, et., al.*** 267 Ga. 760, 482 S.E.2d 362 (Ga. 03/19/1997) The Supreme Court of Georgia held:

> [33] "any use and occupation which is so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another." ***Friendship Baptist Church v. West***, 265 Ga. 745 (462 S.E.2d 618) (1995)

Judge Becker, denied Plaintiffs their rights to a jury trial.

> [44] While "[a]dverse possession is usually a mixed question of law and fact — **whether the facts exist which constitute adverse possession, is for the jury to judge**... " ***Thompson v. Fouts,*** 203 Ga. 522 (2) (47 S.E.2d 571) (1948).

See also ***Thompson et., al., v. Mcdougal***, 248 Ga. App. 270, 546 S.E.2d 44 (2001) reversed:

> "Factual questions...regarding whether or not a **prescriptive easement** has been established **must be resolved by a jury**. See ***Hasty v. Wilson***, 223 Ga. 739, 743 (2) (a) (158 SE2d 915) (1967)."

Georgia Power, has continually insisted they have easement over the entire property; the lack of definite boundaries makes Appellant's property unmarketable.

> "This Court has recognized that ...so long as the **boundaries are clearly defined, i.e., where the evidence identifies the part which is in possession and distinguishes it from the part**

> **which is not."** ***Ragan v. Carter***, 145 Ga. 320 (1) (89 S.E. 206) (1916); ***Whitehead v. Pitts***, 127 Ga. 774 (1) (56 S.E. 1004) (1907); ***Tripp v. Fausett***, 94 Ga. 330 (21 S.E. 572) (1894).

The fraudulent easement document that Becker Ruled was valid, shows that Georgia Power had been granted easement for ***all properties*** in the District 18, Land Lots 37, 74 (Land Lots consist of around 44 acres) on Shiphud Rd and Ridge Avenue.

The use of fraudulent documents is illegal in both state and federal courts, and must not be condoned by either Court as it tampers with the administration of justice. As the Supreme Court noted in ***Hazel-Atlas Co. v. Hartford Co.***, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250, reh'g denied, 322 U.S. 772, 64 S.Ct. 1281, 88 L.Ed. 1596 (1944), a case that also involved an allegedly fraudulent document:

> "[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society."

In Superior Court, Plaintiffs filed Motion to Strike for fraudulent statements, use of fraudulent land documents, and fraud upon the Court. Georgia laws regarding the use of fraudulent land documents in an attempt to gain property or any interest therein is very specific:

O.C.G.A. § 44-2-43

Any person who: (1) fraudulently obtains or attempts to obtain a decree of registration of title to **any land or interest therein**; (2) knowingly offers in evidence **any forged or fraudulent document** in the course of **any proceedings** with regard to registered lands or **any interest** therein; (3) makes or utters **any forged** instrument of transfer or instrument of mortgage or **any other paper, writing, or document** used in connection with **any of the proceedings** required for the registration of lands or the notation of entries upon the register of titles; (4) steals or fraudulently conceals any owner's certificate, creditor's certificate, or other certificate of title provided for under this article; (5) fraudulently alters, changes, or mutilates **any writing, instrument, document, record, registration, or register** provided for under this article; (6) makes **any false oath or affidavit** with respect to **any matter or thing** provided for in this article; or (7) makes or knowingly uses **any** counterfeit of **any** certificate provided for by this article **shall be guilty of a felony and shall be punished** by imprisonment for not less than one nor more than ten years.

O.C.G.A. § 44-2-44

Any clerk, deputy clerk, special clerk, or other person performing the duties of the office of clerk who: (1) fraudulently enters a decree of registration without authority of the court; (2) fraudulently registers **any** title; (3) fraudulently makes **any** notation or entry upon the title register; (4) fraudulently issues **any** certificate of title, creditor's certificate, or other instrument provided for by this article; or (5) knowingly, intentionally, and fraudulently does **any act of omission or commission** under color of his office in relation to the matters provided for by this article **shall be guilty of a felony and shall be removed** from office and **be permanently disqualified** from holding **any public office and shall be punished** by imprisonment for not less than one nor more than ten years.

O.C.G.A. §44-2-46

Any examiner of title who knowingly and fraudulently makes **any** false report to the court as to **any** matter relating to **any** title which is sought to be registered under this article, as to **any**

> matter affecting the same, or as to **any** other matter referred to him under this article or who fraudulently conspires with **any other person** or persons to use this article in **defrauding any other person** or persons, firm, or corporation or who is guilty of **any** willful malpractice in his office **shall be guilty of a felony** and **be punished** by imprisonment for not less than one nor more than ten years.

Georgia statute is very specific about false statements even when land is not involved as shown in ***The State v. Johnson***, 269 Ga. 370 (499 SE2d 56) (1998) reversed:

> "That statute sets forth three ways to commit the crime of false statement: (1) when a person knowingly and wilfully falsifies a material fact; (2) when a person makes a false, fictitious, or fraudulent statement or representation; or (3) when a person "makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry." Id. This appeal involves the third way of violating OCGA 16-10-20. ***State v. Luster***, 204 Ga. App. 156, 158 (1) (a) (ii) (419 SE2d 32) (1992). Even construing OCGA 16-10-20 strictly against the State, see generally ***Jowers v. State***, 225 Ga. App. 809 (2) (484 SE2d 803) (1997), the language therein unambiguously prohibits an individual from making or using any false writing or document, without regard to the identity of the individual who initially made or subsequently used the false document"
>
> "Where statutory language is plain and unequivocal and leads to no absurd or impracticable consequence, the court has no authority to place a different construction upon it. See generally ***Holden v. State***, 187 Ga. App. 597 (2) (370 SE2d 847) (1988). It thus follows that under OCGA 16-10-20, all individuals who use a false writing or document, ...in any matter within the jurisdiction of the State or its political subdivisions, may be charged with violating the statute."
>
> '"Any party to a crime who did not directly commit the crime may be indicted, tried, convicted, and punished for commission of the crime ...." ***State v. Military Circle Pet Center***, 257 Ga.

388 (360 SE2d 248) (1987); see also ***Jenkins v. State***, 172 Ga. App. 715 (4) (324 SE2d 491) (1984)".'

C. Fourteenth Amendment and Equal Protection Clause

The fraudulent easement document that Becker Ruled on shows that Georgia Power had been granted easement for ***all properties*** in the District 18, Land Lots 37, 74 (Land Lots consist of around 44 acres) on Shiphud Rd and Ridge Avenue. There is now a "cloud" upon Plaintiffs' property making their property worthless because there are no boundaries described as required by Georgia's Land Registration Laws before anything having to do with land documents can be recorded in the Book of Deeds.

Judge Becker clearly, unreasonably discriminated, violating Rights and her Oath of Office.

> "[t]he purpose of the **equal protection clause** of the Fourteenth Amendment is to **secure every person within the State's jurisdiction against intentional and arbitrary discrimination**, ...by its improper execution through duly constituted agents.'" ***Sioux City Bridge Co.***, supra, at 445 (quoting ***Sunday Lake Iron Co. v. Township of Wakefield***, 247 U. S. 350, 352 (1918)).' ***Village of Willowbrook v. Olech,*** 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (U.S. 02/23/2000)

II. THE DISTRICT COURT ACTION

There was an obvious conspiracy between Judge Becker and Georgia Power to allow Georgia Power to steal part of Plaintiffs' land. Georgia Power's criminal acts and use of fraudulent/ forged/manipulated land documents, and Becker's

refusal to follow strict Georgia Land Registration laws and refusal to recuse, gave cause to file the District Court action.

The case in District Court listed causes of action for conspiracy to violate rights under color of law, fraud upon the court, violation of Civil and Constitutional Rights. Judge Duffey, Jr. joined the conspiracy, had ex-parte communications, allowed violations of Federal Rules and Local Rules, ignored Defendant's refusal to file Initial Disclosures, Certificate of Interested Persons, Preliminary Report and Discovery Plan without consequence.

> Instructions …Pretrial Proceedings pg 1 states:
> "…assuring the orderly conduct of discovery…submitting promptly …without further notice, order, or direction. Failure… in compliance with these instructions… default judgment…"
>
> Page 6:
> **I. Initial Disclosures**
> "Each party's "Initial Disclosures" shall be…within thirty (30) days after the appearance of a defendant…"
>
> **II. Certificate of Interested Persons**
> "LR 3.3…all private (non-governmental) parties shall be required…within thirty (30) days…"
> **V. Preliminary Report and Discovery Plan**
> "LR 16.2; LR 84.1.C…to promote early analysis…and to alert the Court…must be…within thirty (30) days…This Local Rule applies to all cases…"
>
> **LR 16.5 Sanctions**
> "Failure to comply with the court's pretrial instructions… default judgment."

None of the District Court defendants filed verified responses, in essence, they filed nothing. The failure to "file their claim under oath" was a "failure to

present necessary evidence" see ***Lamb v. T-Shirt City, Inc., et., al***, 618 S.E.2d 108, 272 Ga. App. 298 (2003); ***Piedmont Cotton Mills v. Woelper***, 209 Ga. 109, 110 (498 S.E.2d 255) (1998).

A. Judge Duffey, Jr.'s Verbal Assault

Further, defendants violated Plaintiffs' First Amendment Rights by making slanderous, defamatory statements in their responses, which had nothing to do with the case at bar, for the sole purpose of harassment, intimidation, and to discredit Plaintiffs and their complaint. The abusive language, having no legitimate function in the case, was clearly designed for the improper purpose of demeaning Plaintiffs and diminishing their reputations in the eyes of the hundreds and perhaps thousands of people who have and will read those papers. Such language is sanction-able under Rule 11 as it was "interposed for [an] improper purpose, such as to harass. . . " See, e.g., ***Redd v. Fisher Controls***, 147 FRD 128 (W.D. Texas 1993); ***Novak v. National Broadcasting Company, Inc.***, 779 F. Supp. 1428 (S.D. N.Y. 1992).

In Plaintiffs' responses to defendant's ***unverified*** responsive pleadings, Plaintiffs requested Judge Duffey disregard and strike the irrelevant, scandalous lies from the defendants' pleadings. Rather than disregard, Judge Duffey waited until he dismissed, then in his Ruling he enhanced the irrelevant and scandalous lies. Judge Duffey knowingly, willingly, wantonly and maliciously stated the

Plaintiffs were criminals, lies he knew for a fact were untrue for the purpose of harassment, embarrassment, to discredit and harm Plaintiffs' reputations. For a District Court Judge to stoop so low is reprehensible and results in manifest injustice.

B. Ruling on Evidence and Credibility of Evidence

Georgia Power Defendants attached evidence to which Duffey gave credibility, and about which Georgia Power commented "remember you are not to consider the evidence…" clearly showing the matter had been discussed ex parte. Judge Duffey, Jr. at the same time made remarks to discredit Plaintiffs and their' evidence. Both conflicting evidence and credibility are matters reserved only for a jury as fact trier. In ***Therrell v. Marble Holdings, Crop.***, 96 F.2d 1555 (11th Cir. 1992) ***this Court*** held:

> [93] "**Credibility** is a matter **solely for the jury**. 'It is the function of the jury as the traditional finder of the facts, and **not the court to weigh** conflicting evidence and inferences, and determine credibility…' ***Buckley***, 785 F.2d at 1527 (quoting ***Boeing***, 411 F.2d at 375)."

Judge Duffey, Jr. ignored matters that are to be reserved only for a jury, and he acted as trier of fact and deemed Georgia Power Defendants' Unverified answer and evidence as factual, then dismissed under ***Younger Abstention***.

All three times that one or both of the Plaintiffs appeared in civil actions in front of Judge Duffey, Duffey knowingly, willingly, wantonly and maliciously

went out his way to make up slanderous, defamatory lies about Plaintiff(s) in his Final Order (the only Ruling he made in each case). The history with Judge Duffey has been an onslaught of verbal assaults and lies to discredit, humiliate, embarrass and harm the Plaintiff(s); to protect criminals,[21] and protect himself for his own criminal acts.

Duffey's Ruling (Doc21 fn1):

> "Plaintiff Stegeman … twice before. Stegeman filed a previous action … ***Stegeman v. State of Georgia, et al.***, …, Stegeman claimed violations of his civil rights…. Plaintiff claimed he improperly was charged [22]… He brought claims … under 42 U.S.C. §§ 1983 and 1985(3). He also brought state law claims … – … July 16, 2007; the Court dismissed the Georgia Case. "

Although sufficient evidence was presented in the form of a Certified copy of the Irrevocable Durable Power of Attorney with an Interest, Judge Duffey ***implied*** that Mr. Stegeman had a general Power of Attorney for his elderly aunt, that was obtained by fraudulent means (forgery/criminal act) and that the Probate Court had to dissolve the Power of Attorney and appoint a guardian of property for the aunt because Plaintiff was wasting away the aunt's estate (criminal acts); he further implied that Wachovia filed suit against Mr. Stegeman and Ms. McDonald

[21] Judge Duffey should have recused/disqualified himself in all the cases which Plaintiffs were part of. The first case with Wachovia, Judge Duffey having been partner at King and Spalding law firm who regularly represented Wachovia; Duffey in a later case had disqualified himself for the same reason when SunTrust was a party in Federal District Court.

[22] Another lie, Plaintiff said he had never been charged, indicted, arrested for any crime.

for fraud (criminal act).

Judge Duffey, with actual knowledge that these implications were lies, he knowingly, willingly, wantonly, and maliciously intended to harm and harmed Plaintiffs, and would in the future harm Plaintiffs whenever someone would read the Order on Pacer's website or the other numerous websites it is posted on.

C. The Wachovia Case

There is newly discovered facts concerning Judge Duffey, Wachovia, and Georgia Power Co. which through due diligence, Plaintiffs could not discover until February/March 2010. According to the Superior Clerks Court Authority, Real Property Records (Deeds), the history between Judge Duffey, Jr. and Wachovia Bank, NA, and Wachovia Mortgage is long and vast.

Judge Duffey, Jr. knew he had no business presiding over the Wachovia case. Duffey was disqualified yet failed to disclose the relationship and/or step aside, which shows that he had no intention of allowing Plaintiffs to prevail through a fair and unbiased tribunal. In order to protect himself and his rulings, Judge Duffey has mistreated these Plaintiffs in every case filed in District Court since the Wachovia case.

Originally filed in Superior Court, the Wachovia case was supposed to get dismissed by both District and Superior Courts barring litigation in either court, it didn't work out that way so Duffey Remanded the case to Superior Court where

Judge Hunter had illegally closed it with restrictions.

Further, Judge Duffey had ex parte communications with Wachovia; Wachovia's Brief to the Supreme Court of Georgia stated that Judge Duffey had given them permission to file their answer late; thus the reason Plaintiffs' filings concerning Default in Federal Court were ignored as if nothing had been filed.[23]

When Wachovia did file a response in District Court, late, it was for a 12(b)(6) Motion to Dismiss; then filed to Stay discovery pending ruling on their Motion to Dismiss. Plaintiffs requested default for Wachovia's late filing, and the rules state that it should have been notated on the docket report. Neither the clerk, nor Judge Duffey had the default logged onto the docket. Because the Court refused to show the default, Superior Court upon remand, gave Wachovia another eight days to answer. Wachovia defaulted three times, and was never sanctioned.

After Granting Wachovia's Motion to Stay Discovery pending a Ruling on Wachovia's Motion to Dismiss[24], Judge Duffey in an Order, threatened Plaintiffs with the ultimate sanction of having their case Dismissed if they failed to file their ***Initial Disclosures, Preliminary Report & Discovery Plan*** and ***Certificate of***

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[23] Wachovia defaulted three times while the action was on-going, the Courts ignored the defaults; obvious signs of ex parte communication, fraud upon the court, and conspiracy

[24] From the Docket Report: "SCHEDULING ORDER: APPROVING 7 Preliminary Report and Discovery Schedule. Discovery period not to commence until 10 days after the Court rules on Wachovia's 3 Motion to Dismiss. Signed by Judge William S. Duffey Jr. on 3/20/06. (kt) (Entered: 03/20/2006)"

Interested Persons within ten days.[25]

Plaintiffs complied with the Order. The Disclosures showed that Plaintiffs had sufficient documentation to prove their case and implement criminal acts of Wachovia, several County key personnel, and several judges; the case was immediately Remanded to Superior Court, on the claim of lack of jurisdiction. With no mention of Wachovia's default; and although the Order stated that the case had been "improperly" removed, Judge Duffey failed to clarify. Judge Duffey Remanded the case to Judge Adams, Judge Hunter immediately snatched it up, did not re-open the case she closed, and continued violating due process and rights under color of law.

In Superior Court, Plaintiffs were never allowed to file any evidence, and the case was ultimately dismissed under 12(b)(6), failure to state a claim for which relief can be granted after being back in Superior Court for one full year more.

As ***Chudasama v. Mazda Motor Corp.***, 123 F.3d 1353 (11th Cir. 09/15/1997 shows, both District and Superior Courts abused discretion when it came to Wachovia's Motion to Dismiss for failure to state a claim:

> "Facial challenges to the legal sufficiency of a claim or defense, such as a **motion to dismiss based on failure to state a claim**

[25] From the Docket Report: "ORDER DIRECTING Plaintiffs to submit their Certificate of Interested Persons and their Preliminary Report and Discovery Plan within 15 days of the date of entry of this order. Failure to comply with this order will result in the dismissal of this action pursuant to Local Rule 41.3(A)(2). Signed by Judge William S. Duffey Jr. on 3/20/06. (kt) (Entered: 03/20/2006)"

> **for relief**,*fn35 **should, however, be resolved before discovery begins**. Such a dispute always presents a purely legal question; there are no issues of fact because the allegations contained in the pleading are presumed to be true. See ***Mitchell v. Duval County Sch. Bd.***, 107 F.3d 837, 838 n. 1 (11th Cir.1997) (per curiam). Therefore, **neither the parties nor the court have any need for discovery before the court rules on the motion**. See ***Kaylor v. Fields***, 661 F.2d 1177, 1184 (8th Cir.1981)"

Plaintiffs wrote a letter to Judge Duffey about what happened upon Remand to Superior Court. Therefore, when Plaintiff Stegeman filed a case in District Court and Superior Court was named a defendant in the case citing the improprieties during the Wachovia case, Judge Duffey would have had to disqualify himself from the case, which he failed/refused to do.

1) The case at bar and references to the Wachovia case:

Judge Duffey has lied about past cases with Plaintiffs. It has become a pattern and/or practice, in every case with either one or both of these Plaintiffs. The lies about the first case continue even now. The lies include but are not limited to: that an Irrevocable Durable Power of Attorney with an Interest between James and his elderly aunt had to be revoked by Probate Court, and guardian of property appointed because Plaintiff was wasting the aunt's estate; then Plaintiffs were sued by Wachovia for fraud, (Wachovia never sued Plaintiffs, but the claim supports the allegations) Judge Duffey claims that Plaintiffs did not like the outcome of the case, so they filed suit against Wachovia.

The conspiracy was to have the case dismissed from both Superior and

Federal Courts, which would prevent Plaintiffs' from filing another case (res judicata), and they would be forever blocked in both courts. Judge Hunter had already closed the Superior Court case (she can take no action while pending removal), Wachovia did not file a Petition to be in Federal Court as must be done, and there is no evidence of the Bond they posted for the removal. The removal to federal court aided Wachovia in finding out what documents, witnesses, etc. Plaintiffs would be using.[26]

Plaintiffs filed for Reconsideration September 9, 2009 (Doc 23), in which they asked Judge Duffey to remove the following grossly incorrect statements about the Wachovia case from the Order and Opinion.

> "**Wachovia Bank filed an action in the DeKalb County Superior Court against Plaintiffs Stegeman and McDonald for accounting and damages**... Plaintiffs asserted a variety of counterclaims alleging their rights were violated and assets improperly taken. The **parties settled this litigation. Plaintiffs refused to conclude the settlement, however, and the litigation continued. Unsatisfied with the result of the matter**,..."
>
> "Plaintiffs Stegeman and McDonald brought a separate pro se action in the DeKalb County Superior Court **against Wachovia and several other defendants**.[27] Plaintiffs' many claims included breach of contract, grand larceny, fraud and conspiracy. Wachovia removed the action to this Court on the basis of

[26] That is why Wachovia wasn't worried that they had defaulted, it was supposed to get dismissed in Federal Court, but Plaintiffs complied with Duffey's deadline and that caused problems

[27] The Wachovia action Judge Duffey refers to had **only** Wachovia and Wachovia employees listed as defendants, there were no "others" as he claims.

> diversity jurisdiction. See ***Stegeman v. Wachovia Bank***, No. 1:06-cv-0242-WSD (N.D. Ga. 2006) (the "Wachovia Case"). On April 4, 2006, the Court remanded the Wachovia Case for lack of jurisdiction."

Instead, Judge Duffey in his Order and Opinion knowingly, willingly, wantonly, maliciously, and with the intent to harm, harmed Plaintiffs when he made allegations against Plaintiffs that exceeded even those made by the defendants. Judge Duffey enhanced and enlarged defendants' lies. Judge Duffey lied when he stated that Plaintiffs had been sued by Wachovia for felonious acts.[28] When confronted with his lies, Judge Duffey remarked that the statements were made for giving context to the rest of the Order. To what context does he refer? Surely the only thing these lies would give context to is the rest of the Order's verbal assaults upon the Plaintiffs.

> "Plaintiffs first state that the Court incorrectly described two other actions before this Court involving the Plaintiffs. See August 26, 2008 Order at 2-3 n.1; Pls.' Mot. for Reconsideration at 2-4. **The Court's description of those cases existed solely to provide context to the rest of the Order**, ..."

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[28] Wachovia ***never*** filed a suit against Plaintiffs ***for anything***; ***there was no counterclaim filed by Plaintiffs, who could not be dissatisfied with the outcome of an action that never happened***. A suit for Accounting and damages, is a suit for fraud, which when involving a bank would obviously be of a criminal nature. Judge Duffey insinuated that Plaintiffs are criminals.

While it is true that Plaintiffs filed an action against Wachovia and several of Wachovia's Employees, Wachovia did remove the case to US District Court, and Duffey did Remand the case; there is nothing contained in the paragraphs that have any truth, or relevancy to the case at bar and the only explanation for making up the false statements would be to injure the reputations of and discredit Plaintiffs

A Federal Court Judge telling outright lies; stating that innocent Plaintiffs are guilty of felonious acts, then claiming the statements were made to "provide context to the rest of the Order". It is a sad day when Federal Court Judges have to lie about Plaintiffs, be defense attorney for defendants against pro se litigants.

Judge Duffey's lies show he conspired with defendants in ex parte communications, shows absolute bias/prejudice, a blatant disregard of Plaintiffs Rights, due process of law, the judicial system as a whole, and his Oath of Office.

D Stegeman v State, et., al.,

Judge Duffey, having prior knowledge of the facts, evidence, and persons outside of the case itself, having personal connections with defendants, and having already formed an opinion, had to disqualify himself from hearing the case; he did not. Duffey had to protect the malicious and criminal acts he committed during the Wachovia case, and protect other Judges from their criminal acts.

In this second civil action, Mr. Stegeman was the sole Plaintiff. Around a month after filing the District Court action, and having named Superior Court, State Court, a couple of judges, and a City of Stone Mountain Police Officer as defendants, Mr. Stegeman feared retaliation, Moved for Temporary Restraining Order (TRO) and Preliminary Injunction. The clerk said that there would be a hearing set within ten days. Plaintiff called the fifth and the tenth day, there was no hearing set, the clerk advised Mr. Stegeman that the court would set a date, and

mail Notice of the hearing. The TRO/Preliminary Injunction was ignored, just as if never filed. Doc 87, the only ruling by Duffey, the TRO/Injunction was addressed with lies:

> "Plaintiff filed a Motion ...(TRO [6].) The Court notes that it attempted to schedule a hearing on the Motion soon after it was filed, but Plaintiff was unavailable for a hearing. At this stage in the litigation, a request for preliminary injunction is moot."

Plaintiff, being disabled and proceeding pro se Moved the Court to waive Pacer fees only to view his case; thereby having the same advantages as opposing counsel, (of which there were nine) as far as keeping up with what had been filed and when. The final ruling addressed the Motion:

> "Plaintiff requests that this Court issue an Order exempting him from payment of PACER User Fees .... (Mot. for Exemption [26].) This request is denied as moot. Pro se litigants are required to file documents with the Court in paper form. If Plaintiff desires free access to the electronic docket, it is available at the Clerk's Office. Because this case is dismissed, it is unnecessary for the Court to enter an Order for future filings. Plaintiff's Motion for Exemption is DENIED as moot."

Duffey also, acting as Defendant's legal counsel, and going against over 130 years of Supreme Court of Georgia's Rulings which have repeatedly confirmed that Probate Court is limited jurisdiction – County Court. [29] Judge Duffey has Ruled Probate and State Court an arm of the state so that he could grant Immunity:

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[29] Plaintiff cited a sufficient number of cases that reinforced that Probate Court is a limited jurisdiction County Court, Judge Duffey, Jr. ignored Supreme Court of Georgia Rulings on the issue.

> "**Although Defendants did not make the argument**, the Court notes that because the Probate Court, Superior Court, and State Court are arms of the State of Georgia rather than DeKalb County, it is doubtful that DeKalb County could be held liable under a § 1983 municipal liability theory for any "actions" taken by these state court defendants"

Judge Duffey ignored Mr. Stegeman's requests for appointment of legal counsel. Judge Duffey never addressed Plaintiff Stegeman is a member of a protected class; that he is 100% disabled, receiving Supplemental Security Income; in order to receive SSI, the individual has to be 100% disabled on the grounds of both mental and physical disabilities, thereby a member of a protected class; 11th Amendment Immunity fails as a matter of law. Further Judge Duffey's own acts of violating Rights under color of law, became criminal acts.

Two filings, one of which was Response to County Defendants' Motion to Dismiss was removed from the case and docket report, and never to be addressed or seen again. After first writing a letter to the Clerk, and nothing being done, Plaintiff filed a Petition to have the Docket corrected and have the filings re-inserted. The Petition was ignored. One can only assume that the filings were so damning that they could not be allowed to remain part of the record or be viewable on the Pacer website.

During seven (7) months time, there had been quite a few Motions filed. All defendants had claimed immunity, and other defenses which are entitled to dismissal. Duffey refused to rule on anything until after the full four month

discovery period had expired, Dismissed the case without ever having a hearing.

Refusing to rule on immunity has been deemed to be an abuse of discretion, see ***Chudasama v. Mazda Motor Corp***., 123 F.3d 1353 (11th Cir. 09/15/1997):

> "District courts must take an active role in managing cases on their docket. See generally ***Hoffmann-La Roche Inc. v. Sperling***, 493 U.S. 165, 171, 110 S. Ct. 482, 487, 107 L. Ed. 2d 480 (1989) (emphasizing "wisdom and necessity for early judicial intervention in the management of litigation")"
>
> "District courts enjoy broad discretion in deciding how best to manage the cases before them. See, e.g., ***United States v. McCutcheon***, 86 F.3d 187, 190 (11th Cir.1996). This discretion is not unfettered, however. When a litigant's rights are materially prejudiced by the district court's mismanagement of a case, we must redress the abuse of discretion."

Judge Duffey failed to rule on Motions to Dismiss filed by all defendants, failed to rule on Immunity, even waited until the Final Order to Rule on Motion for Leave to Amend the Complaint, this too has been held as an abuse of discretion, see ***Chudasama v. Mazda Motor Corp***., 123 F.3d 1353 (11th Cir. 09/15/1997):

> [65] **Failure to consider and rule on significant pretrial motions before issuing dispositive orders can be an abuse of discretion**. See, e.g., ***In re School Asbestos Litig***., 977 F.2d 764, 792-93 (3d Cir.1992) (granting writ of mandamus as remedy for district court's "arbitrary refusal to rule on a summary judgment motion"); ***Ellison v. Ford Motor Co***., 847 F.2d 297, 300-01 (6th Cir.1988) (finding district court's failure to rule on motion to amend complaint before granting summary judgment abuse of discretion); .... Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief,*fn35 should, however, be resolved before discovery begins. ... See ***Mitchell v. Duval County Sch. Bd***., 107 F.3d 837, 838 n. 1 (11th Cir.1997) (per curiam).

In the Order of Dismissal, Duffey denied all of Plaintiff's Motions; see Fed. R. Civ. P. Rule 78. Motion Day:

> "Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of, but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions."

By ruling on nothing until the Final Order, Plaintiff was denied the Right to Appeal Rulings that could have affected the outcome of the case, and trying to Appeal everything at one time, caused a hardship of filing a proper Appeal due to the Appellate Rules of a 30-page limit on Briefs.

In the case at bar, all defendants refused to file mandatory Initial Disclosures Certificate of Interested Persons , Preliminary Report and Discovery Plan . In the Wachovia case, Judge Duffey held Plaintiffs to a much higher standard than any of the defendants in any of the three cases. Judge Duffey in the Wachovia case, threatened Plaintiffs with the ultimate sanction of having their case dismissed if they failed to comply with the filing of the same items within a specific time.

> "The severity of these sanctions required the court to find that Mazda's 'noncompliance' with the compel order was intentional or in bad faith. See ***Societe Internationale Pour Participations Industrielles et Commerciales v. Rogers***, 357 U.S. 197, 212, 78 S. Ct. 1087, 1096, 2 L. Ed. 2d 1255 (1958); ***Searock v. Stripling***, 736 F.2d 650, 653 (11th Cir.1984).
>
> 'Violation of a discovery order caused by simple negligence, misunderstanding, or inability to comply will not justify a Rule 37 default....' ***Malautea***, 987 F.2d at 1542. Moreover, a district

> court abuses its discretion under Rule 37(b)(2) if it enters a default when 'less draconian but equally effective sanctions were available.' ***Adolph Coors Co. v. Movement Against Racism & the Klan***, 777 F.2d 1538, 1543 (11th Cir.1985)." ***Chudasama v. Mazda Motor Corp.***, 123 F.3d 1353 (11th Cir. 09/15/1997)

When addressing Plaintiffs' Motion to Recuse, Judge Duffey's verbal assault upon Plaintiffs escalated. Judge Duffey wanted to delay Ruling on Recusal, that way he could prevent Plaintiffs from appealing the order and having a chance of having a fair, unbiased Judge rule on their case.

Another obvious sign of prejudice/bias/partiality, Judge Duffey stated that he personally reviewed the Superior Court proceedings and he saw no due process violations. Evidently, he and defendants had been ex parte conspiring. Even a lay person would be aware of the violations. That fact alone shows prejudice and bias.

Judge Duffey apparently assumes that Plaintiffs are too ignorant to realize the gross violations of their Rights through ex parte conspiring with the defendants, and too stupid to realize that a Judge personally investigating or looking into the allegations, reaches the grounds of unconscionable actions.

None on the defendants objected to, rebutted, or disputed Plaintiffs' evidence; Duffey addressed and discredited the evidence, ignoring the fact that only a Jury can be trier of fact on evidence.

Plaintiffs' filings included substantial amount of caselaw showing why Younger failed. Judge Duffey violated the principles of stare decisis and past case

precedent; further Judge Duffey's rulings went against his own past ruling, past rulings of the Eleventh Circuit Court of Appeals, and against U.S. Supreme Court Rulings. Judge Duffey turned the Plaintiffs in the Superior Court action, into Defendants in order to make his ruling work.

Had Judge Duffey actually taken the time to read the complaint, perhaps he would know what the case pertained to, rather than what he claimed:

> "This Court indicates that the "central question is regarding the application of Georgia real property law, especially the existence and scope of rights within an easement." (Or. pg. 19) And "the DeKalb Easement Case concerns... literally effect the welfare and well-being of the community".

Obviously Judge Duffey got so involved "looking into" the Superior Court action, he thought that the complaint filed in Superior Court was the case before him; Plaintiffs' complaint filed in District Court concerned totally different issues, such as Conspiracy to Violate Rights Under Color of Law; use of a fraudulent/forged/manipulated land document; fraud upon the Court; due process.

Judge Duffey Dismissed under Younger Abstention claiming he lacked jurisdiction. He certainly spent a lot of words addressing the Plaintiffs' and past cases and the merits of the case, evidence, and issues that he lacked jurisdiction on.

The Georgia Power defendants, in their Brief filed in this Court, admitted the allegations stated in Plaintiffs' complaint. Defendants admitted fraud and fraud upon the court, perjury, etc.; but stated that they had a right to do whatever it took

to win the case against them. Apparently, the ancient elements of due process: the right to file pleadings; the right to be heard; the right to a decision in a form that can be appealed; and the right to have all this take place before an impartial tribunal, are deemed "political opinions" (GA Power defendants stated in a Brief filed in the 11th Cir. Court of Appeals to Recuse Judge Hull).

Plaintiffs have come to the conclusion that lawyers and judges seem to know so little about the law because their legal education was grotesquely inefficient, dwelling on the intellectual morass of political correctness, sophistry (false logic), perfecting the art of deception, and learning the art of intentional obfuscation. In plain language, they are being taught how to lie, cheat, and steal, and they appear to be quite good at.

ARGUMENT AND CITATIONS OF AUTHORITY

A. Rule 60(b)(2) Newly Discovered Evidence

Fed. R. Civ. P. Rule 60(b)(2) allows for relief from judgment on the grounds of "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)".

In Superior Court, Georgia Power filed Motion for Summary Judgment. Among the Affidavits filed in support of Georgia Power's Motion, was an Affidavit by Marcus Calloway stating that Georgia Power knew before the trespass, and damage to Plaintiffs' property that Georgia Power had no easement

rights concerning Plaintiffs' property. He further stated that Georgia Power had him look into the property again in November, before Georgia Power filed their Verified Answer in Superior Court. This information had been withheld from Plaintiffs in both Superior Court and this Court.

A. Defendants

The Georgia Power Appellees fraudulently concealed pertinent information in both Superior and District Courts until after District Court dismissed the case. In Superior Court, they claimed the need to investigate into Plaintiffs' allegations about the easement documents being fraudulent, refusing to rebut the evidence.

In their Summary Judgment Brief ***"Exhibit B"***, Georgia Power provided further evidence that proved their claims were fraudulent. They suddenly disregarded reformation and wanted the Court to just grant them prescriptive easement, stating "prescription is to make a bad title good", ***Exhibit B*** fn3.

Affidavit by Marcus Calloway ***"Exhibit C"*** clearly states that on August 13, 2007 Dale Reiner at Georgia Power contacted him and requested a title search on Appellant's property ¶3, which he performed August 15, 2007[30] ¶4; and another

[30] Calloway's findings show that the property description did not match Appellant's property; Georgia Power knew the documents did not pertain to Appellant's property, yet in both Magistrate and Superior Courts they swore under oath the document covered Plaintiffs' property, and was valid and legal. During both the Superior and District Court cases, they insisted they had a legal valid easement knowing the entire time that was a lie. Georgia Power trespassed onto and criminally damaged Plaintiffs' property August 30, 2007, ***after*** Calloway's research.

search was conducted concerning the property November 20, 2007 ¶10.

B. Judge Duffey, Jr., Grounds to Recuse Judge Duffey, Jr.

Judge Duffey, Jr. beginning with the Wachovia case, has had a personal agenda, and vendetta against the Plaintiffs. Plaintiffs had no way of discovering the long, relationship between Judge Duffey, Jr. and Wachovia Bank, NA, Wachovia Mortgage, and Georgia Power Co. According to Superior Court Clerk's Authority Website, in the Real Estate Deeds, there are no less than eight (8) entries listing Judge William S. Duffey, Jr. and Wachovia Bank, N.A. and/or Wachovia Mortgage.

Judge Duffey, Jr. had been a partner with King & Spalding from 1987-1994 and again from 1995-2001. Wachovia is among the list of clients of King & Spalding.

Judge Duffey, Jr. had an obligation to disclose the relationship and step aside from the case just as he had done in the Coca-Cola Heirs v SunTrust case. Because of the failure to disclose the information, Plaintiffs only recently learned of the relationship.

Plaintiffs also only recently learned of Judge Duffey, Jr.'s further relationship with Georgia Power Company and Wachovia. Georgia Power Co., Wachovia, King & Spalding, and Judge Duffey Jr. are all on AETC Board of Directors of Public Broadcasting Atlanta AETC, Inc.

Further Judge Duffey, Jr.'s pattern/practice of assault upon Plaintiff(s).

B. Rule 60(b)(3) Intrinsic/Extrinsic Fraud, Fraud Upon the Court and by the Court, Misrepresentation and Misconduct

Fed. R. Civ. P. Rule 60(b)(3) allows for relief from judgment on the grounds of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party". Clearly Plaintiffs' fall within all of the grounds for relief to be granted under 60(b)(3).

> "A Rule 60 motion for fraud on the court is an allegation of "fraud which is directed to the judicial machinery itself and is not fraud between the parties . . . ."
>
> "Concerning the severity of claims necessary to establish fraud on the court, we stated in ***Zurich North America***[31]: Generally speaking, only the most egregious conduct, such as ...the fabrication of evidence ...in which an attorney is implicated will constitute a fraud on the court."
>
> "We have also stated that fraud on the court is 'fraud which is directed to the judicial machinery itself ...' ***Bulloch v. United States***, 763 F.2d 1115, 1121 (10th Cir. 1985). Fraud on the court '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.'"

Fraud upon the court substantially interfered with Plaintiffs' ability to fully and fairly prosecute their case; the fraud of which Plaintiffs complain, involves attorneys, and the court itself had actual knowledge, willingly, wantonly and maliciously violated due process and Plaintiffs' Rights under color of law.

Although Plaintiffs have had repeatedly shown the Courts that the Georgia

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[31] ***Zurich N. Am. v. Matrix Serv., Inc.***, 426 F.3d 1281, 1289, 1291 (10th Cir. 2005)

Power defendants were knowingly, willingly, and wantonly using a fraudulent land document, and that the man they claim granted easement never existed, not one defendant rebutted, and not one Court addressed the issue.

Georgia Power knowingly, willingly, and wantonly committed fraud and fraud upon the court; was allowed to "tamper with the administration of justice" "a wrong against the institutions set up to protect and safeguard the public" and "cannot complacently be tolerated". As the Supreme Court noted in ***Hazel-Atlas Co. v. Hartford Co.***, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250, reh'g denied, 322 U.S. 772, 64 S.Ct. 1281, 88 L.Ed. 1596 (1944), a case that also involved an allegedly fraudulent document @61:

> "even if Hazel did not exercise the highest degree of diligence, Hartford's fraud cannot be condoned for that reason alone.... [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

The Georgia Power entity that Verified the Answers to the Complaint is Georgia Power's in-house attorney. "Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." ***H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co.***, 536 F.2d at 1119"

In ***Bulloch v. United States***, 763 F.2d 1115 (10th Cir. 1985) held the following:

> "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."

It can easily be assumed that this Court knew that pertinent evidence had been withheld from Plaintiffs, thus the reason this Court allowed Fed. R. Civ. P. Rule 26(a), N.D. Ga. L.R. 3.3, and L.R. 16.2 to be ignored/violated by defendants. An offense that's sanction is dismissal or striking of an answer.

Judge Becker's Order Granting Defendant's Summary Judgment claims that she read both sides' briefs, considering Plaintiffs were not allowed to file a Brief, it must have been a very difficult task.

Becker's Ruling also stated that Plaintiffs did not appear at the hearing. The hearing was to be held at 9:30 A.M., the Order was filed at 9:12 A.M. that same morning. As a matter of fact, it would have been impossible for Plaintiffs to be at a hearing that was decided prior to the time for which the hearing was set.

C. Rule 60(b)(4) Ruling is Void/Grounds to Recuse Judge Duffey, Jr.

Fed. R. Civ. P. Rule 60(b)(4) allows for relief from judgment, "when the judgment is void". It has long been held that Rulings made in violation of due process of law are not merely voidable, but void and may be so held by any court

at any time. In ***United States v. Buck*** 281 F.3d 1336, 1342-43 (10th Cir 2002) the Court held:

> "A judgment is void only if the court ...lacked jurisdiction..., **or acted in a manner inconsistent with due process of law.**" ***Buck***, 281 F.3d at 1344 (internal quotations omitted).

Plaintiffs have been systematically and intentionally denied the right to be heard in court in support of their legal claims. Even one who accuses a sitting President of various torts was held to be:

> "constitutionally entitled to access to the courts and to equal protection of the laws. 'The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.' ***Marbury v. Madison***, 5 U.S. (1 Cranch) 137, 163, 2 L. Ed. 60 (1803)." ***Jones v. Clinton***, 72 F3d 1354 (8th Cir. 1996), rehearing en banc den., 81 F3d 78; cert. granted, 116 S.Ct. 2545. "the Constitution . . . did not create a monarchy. . . the President, like all other government officials, is subject to the same laws that apply to all other members of our society." ***Id.*** at 1358

The outcome of Plaintiffs' case was determined by the whim of a judge who has knowingly, willingly, and wantonly and continually made malicious, false and baseless allegations against Plaintiffs; verbally assaulted Plaintiffs and because it has been the same in the three different cases in front of him, Duffey has established a pattern and practice. Judge Duffey refused to recuse himself, ensuring that Plaintiffs case would be dismissed and that the crimes Judge Duffey was covering up, and the criminals he was protecting prevailed.

"The United States Supreme Court has made clear that 'a fair

> trial in a fair tribunal is a basic requirement of due process' in administrative adjudicatory proceedings as well as in courts" ***Michigan Dept. of Soc. Sercs. V. Shalala***, 859 F. Supp. 1113, 1123 (W.D. Mich. 1999) (quoting ***Withorow v. Larkin***, 421 U.S. 35, 36, 95 S.Ct. 1456, 1459, 43 L.E.d.2d 712 (1975)) Thus stated Justice Kennedy in his concurring opinion in the recent Supreme Court case …'[i]f through obduracy, honest mistake, or simple inability to attain self knowledge the judge fails to acknowledge a disqualifying predisposition or circumstance, an **appellate court must order recusal no matter what the source**.' ***Liteky v. U.S.***, 510 U.S. 540, 563, 114 S.Ct.1147, 1161, 127 L.Ed.2d 474 (1994) (Kennedy J. concurring) This is because, as our court of appeals has declared, 'litigants ought not have to face a judge where there is a reasonable question of impartiality…' ***Alexander v. Primerica Holdings, Inc.***, 10 F.3d 155, (3rd Cir. 1993). ***D.B. v. Ocean Tp. Bd. Of Educ.***, 985 F.Supp. 457 (D.N.J. 1997) (Bold emphasis added.)

After first viciously, verbally abusing Plaintiffs and everything they filed, Judge Duffey dismissed the case under Younger Abstention, The use of Younger in the case at bar fails, Duffey didn't care as long as he got the case dismissed; if he recused, Plaintiffs might get a Judge that would abide by the Rules and statutes, that could not be risked.

> "Further, when that same judge has unjustifiably refused to recuse himself, while viciously attacking a party for virtually every action he took in the case, a reasonable person could conclude that the judge had denied the motion, sub silentio. This court, like all other courts, recognizes the concept of judicial action taken sub silentio". E.g., ***Cohen v. Flushing Hospital and Medical Center***, 68 F3d 64, 67, n. 1 (2nd Cir. 1995).

Georgia Power defendants in response to Mr. Stegeman's Motion to Recuse in 11th Cir., complained that Motion to Recuse, "is appealable causing yet another

delay to finality". So rather than Rule and chance an appeal, the 11th Cir. denied the motion, sub silentio, instructed the Clerk to declare it as Moot. Recusal cannot be a moot subject. Florida's Fourth District Court of Appeal, ***Wishoff v. Polen In and For Broward County***, 468 So.2d 1035 (Fla. App. 4 Dist. 1985) held:

> "Since the final judgment was entered after petitioner filed her motion for disqualification, it must be vacated." ***Southern Coatings Inc v. City of Tamarac***, 840 So.2d 1109 (Fla App. 4 Dist. 2003); Fifth District Court of Appeal ***Dura-Stress Inc v. Law***, 634 So.2d 769 (Fla.App.5 Dist. 1994).
>
> "Surely, refusal to rule on motion to recuse can be no less significant than refusal to recuse, which causes 'a risk of undermining the public's confidence in the judicial process' See ***Liljeberg, v. Health Servs. Acquisition Corp.***, 486 U.S. at 864, 108 S. Ct. 2194 (public confidence in the judicial process a factor in review of failure to recuse). "[T]he goal of the judicial disqualification statute is to foster the appearance of impartiality." ***Potashnick v. Port City Construction Co.***, 609 F,2d 1101, 1111 (5th Cir.), cert. denied, 449 U.S. 820, 101 S.Ct. 78, L.Ed.2d 22 (1980); ("any doubts must be resolved in favor of recusal): ***United States v. Kelly***, 888F.2d 732, 744 (11th Cir. 1989).

In 1994, the U.S. Supreme Court held:

> "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. ***Liteky v. U.S.***, 114 S.Ct. 1147, 1162 (1994).

Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. ***Liljeberg v. Health Services Acquisition Corp.***, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the

reality of bias or prejudice but its appearance); ***United States v. Balistrieri***, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." ***Taylor v. O'Grady***, 888 F.2d 1189 (7th Cir. 1989). In ***Pfizer Inc. v. Lord***, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

The Supreme Court has ruled and reaffirmed the principle that "justice must satisfy the appearance of justice", ***Levine v. United States,*** 362 U.S. 610, 80 S.Ct. 1038 (1960), citing ***Offutt v. United States***, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

"Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." ***Taylor v. O'Grady***, 888 F.2d 1189 (7th Cir. 1989).

Further, the judge has a legal duty to disqualify himself even if there is no

motion asking for his disqualification. The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." ***Balistrieri***, at 1202.

A state is not immune under the Eleventh Amendment from an action in State or Federal Court, including remedies both at law and equity: "The Judicially fashioned doctrine of official immunity does not reach 'so far as to immunize criminal conduct proscribed by an Act of Congress…'" ***Gravel v. United States***, @408 U.S. 606, 408 U.S. 627 (1972). "Judges who would willfully discriminate…would willfully deprive a citizen of his constitutional rights, as this complaint alleges, must take account of 18 U.S.C. 242." See ***Greenwood v. Peacock supra*** at 384 U.S. 830; United States v. Price 383 U.S. 787, 383 U.S. 793-794 (1966); ***United States v. Guest*** 383 U.S. 745, 383 U.S. 753-754 (1966); ***Screws v. United States***, 325 U.S. 91, 325 U.S. 101-106 (1945); ***United States v. Classic***, 313 U.S. 299 (1941). Cf. ***Monroe v. Pape***, 365 U.S. 167, 365 U.S. 187 (1961).

> 18, U.S.C. § 242 Deprivation of Rights Under Color of Law
> "… makes it a crime for any person acting under color of law, statute ordinance regulation or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U. S ."
> "…not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority must be done while … purporting or pretending to act in the performance

> of his/her official duties."
> "... in addition to law enforcement, ... Judges, ... U.S. law enforcement ...other officials like judges, ... Preventing abuse ..., however, is equally necessary to the health of our nation's democracy. That's why it's a federal crime for anyone acting under "color of law" willfully to deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law.."

Plaintiffs have attempted to have Judge Becker and Judge Duffey abide by their Oaths of Office, have the Courts enforce state and Federal law, and honor the Constitution, both Judges and the Courts have refused to do so.

> 28 U.S.C. 453[32] § 453. Oaths of justices and judges
> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office:
> "I, XXX XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as XXX under the Constitution and laws of the United States. So help me God." [italics added for emphasis]

Georgia's Superior Court Judge's Oath Of Office

> O.C.G.A. § 15-6-6:
>
> "I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the superior courts of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

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[32] http://www4.law.cornell.edu/uscode/28/453.html

D. Rule 60(b)(6) Any Other Reason Justifying Relief

Fed. R. Civ. P. Rule 60(b)(6) allows for relief from judgment for "any other reason justifying relief from the operation of judgment". Plaintiffs also satisfy this requirement; Plaintiffs have been subjected to manifest injustice by Judge Duffey and this Court.

When one or both Plaintiffs have been Plaintiffs before Judge Duffey, Jr. Judge Duffey would always come up with arguments not made by the Defendants, and would become counsel for the defendant. Should the Court in this matter, decide that Plaintiffs failed to state pertinent, controlling information that is usable under Rule 60(b)(6) in this matter, the Court can feel free to do so as long as it helps them.

Plaintiff Mr. Stegeman in every case before Judge Duffey, Jr. except this last one, requested appointment of counsel. Of course the request was either ignored or denied. Plaintiff Mr. Stegeman recently realized that one reason that Judge Duffey, Jr.'s Orders and Opinions never brought up Mr. Stegeman's disability until the granting of forma pauperis, then he lied about the benefit coming from Social Security Disability rather than Supplemental Security Income (SSI) was due to the nature of SSI. The requirements met by Plaintiff Stegeman to receive SSI benefits were that Federal doctors had to deem Mr. Stegeman 100% physically disabled as well as 100% mentally disabled. Mr. Stegeman was wrongfully forced to represent

himself in every case.

Fed. R. Civ. P. Rule 17(c)(2):

> "A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem — or issue another appropriate order — to protect a minor or incompetent person who is unrepresented in an action."
>
> "A court may not dismiss on the merits the claim of an incompetent person who is not properly represented." ***Berrios v. N.Y. City Hous. Auth.***, 564 F.3d 130, 135 (2d Cir. 2009)

In every case, Mr. Stegeman provided adequate documentation of his disability, Mr. Stegeman should have been deemed to not be able to protect himself and his rights within the Courts, and Judge Duffey, Jr. knew that he was required to appoint Mr. Stegeman legal counsel, but refused and dismissed every case before the court, except the Wachovia case, it was remanded. "A court may not dismiss on the merits the claim of an incompetent person who is not properly represented." ***Berrios v. N.Y. City Hous. Auth.***, 564 F.3d 130, 135 (2d Cir. 2009). See also: Fed. R. Civ. P. 17(c)(2), is triggered by "actual documentation or testimony" of mental incompetency, ***Ferrelli***, 323 F.3d at 201 n.4

Furthermore, even had Judge Duffey reason not to appoint legal counsel, the history with Judge Duffey, Jr. shows disparate treatment of Plaintiff Mr. Stegeman. The treatment has resulted in great loss, and inflicted emotional distress for a party suffering from mental deficiencies. Disparate treatment has been described by the

Eleventh Circuit Court of Appeals Judges Edmondson, Hull and Forrester in ***Nadler v. Harvey***, No. 06-12692 (11th Cir. 2007) as: "disparate treatment occurs when a disabled individual is treated differently than a non-disabled or less disabled individual 42 U.S.C. §12112(b)."

The sanction of dismissal Judge Duffey, Jr. threatened the Plaintiffs with I the Wachovia case showed "discriminatory discipline", as they were "more severe than the disciplinary measures enforced against others in similar misconduct.".

See also ***Jones v. Gerwens***, 874 F.2d 1534, 1540 (11th Cir.1989) holding that in order to show discriminatory discipline, "...that the disciplinary measures enforced against him were more severe than those enforced against other persons who engaged in similar misconduct" (emphasis added).

> 'Violation of a discovery order caused by simple negligence, misunderstanding, or inability to comply will not justify a Rule 37 default....' ***Malautea***, 987 F.2d at 1542. Moreover, a district court abuses its discretion under Rule 37(b)(2) if it enters a default when 'less draconian but equally effective sanctions were available.' ***Adolph Coors Co. v. Movement Against Racism & the Klan***, 777 F.2d 1538, 1543 (11th Cir.1985)." ***Chudasama v. Mazda Motor Corp.***, 123 F.3d 1353 (11th Cir. 09/15/1997)

CONCLUSION

Plaintiff in this matter have shown just cause for this Court to GRANT their Motions, without which Manifest Injustice will prevail, when the Courts are obligated to see that Truth and Justice prevails.

Plaintiffs move this Honorable Court for an Order GRANTING the setting

aside of the Order Dismissing their case, and an Order to Recuse Judge Duffey, Jr. from presiding over the matter so that Plaintiffs can have a truly unbiased tribunal.

Respectfully submitted, this 31st day of March, 2010

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
Atlanta Division

JAMES B. STEGEMAN, **JANET D. MCDONALD,** **Plaintiffs** **vs.** **SUPERIOR COURT, et., al.,** **Defendants**	**CIVIL ACTION** **FILE NO: 1:08-CV-1971-WSD**

CERTIFICATE OF SERVICE

I Certify that I have this 31st day of March, 2010, served a true and correct copy of the foregoing ***Plaintiffs' Brief in Support of Motion for Relief From Judgment Pursuant to Fed. R. Civ. P. Rules 60(b)(2), (3), (4) and (6), and Motion to Recuse Judge William S. Duffey, Jr.*** upon Defendants, through their attorney on file if known, by causing to be deposited with U.S.P.S., First Class Mail, proper postage affixed thereto addressed as follows:

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