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June 17, 2013
Via first class-mail and fax to 803.734.1890

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1015 Sumter Street
PO Box 11629
Columbia, SC 29211

Re: PDHC v, Estate of Thompson
Civil Action Number: 2010-CP-16-0332
Tracking Number: 2011203391

Dear Ms. Kitchings:

I am in receipt of Mr. Josey's letter to the Court dated June 12, 2013.

It is well-established before this Court that counsel for Respondent represented Appellant for several years prior to, and many months after the lower court case was initiated, and then unilaterally withdrew from the representation of Appellant in a separate proceeding for the sole purpose of continuing to represent Respondent before this Court as well as the circuit court. Counsel for Respondent withdrew from that representation without the consent of Appellant in violation of Rule 1.7. It is well established that an attorney (and his or her firm) cannot simultaneously represent a client in one matter while representing another party suing that same client in another matter. As noted in In *Unified Sewerage Agency v. Jelco Inc.*, 646 F.2d 1339, 1345 (9th Cir.1981), the court held that "disqualification of a law firm based upon representation of a client in a lawsuit against an existing client requires no showing of specific `adverse effect' resulting from such representation. "The prohibition applies even if the two matters are entirely unrelated. "So long as there are unsettled matters tangential to a case, and the attorney assists the client with these matters, he is acting as his representative." *Gurkewitz v. Haberman*, 137 Cal.App.3d 328, 333, 187 Cal.Rptr. 14, 17 (1982). In *Picker Intern., Inc. v. Varian Associates, Inc.*, 670 F. Supp. 1363, the court, in construing Ohio's concurrent or simultaneous representation rule (DR 5-105 of the Code of Prof. Responsibility) stated: "The rationale behind this rule is that a firm owes a client a duty of undivided loyalty. [Citation.] This is true even though a firm may cease representing a client before the disqualification motion is made. Otherwise, a firm could avoid D.R. 5-105 by simply converting a present client into a former one. The Utah Supreme Court, in construing its rule prohibiting concurrent representation (canon 5 of the Utah Code of Prof. Responsibility), concluded clearly: "It is our strong view that an attorney who is simultaneously representing two clients with differing interests should not be able to avoid conforming to Canon 5 by simply dropping one of the clients at his option when a

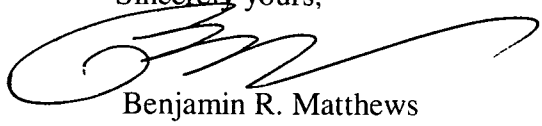
disqualification motion is filed." *Carnegie Cos., Inc. v. Summit Properties, Inc.*, 183 Ohio App.3d 770, 2009Counsel for Respondents violated this prohibition in the case at bar.

Mr. Josey has repeatedly noted the expense these matters have caused the Respondent. The large expense has been caused by the continuing damage Mr. Josey and his law firm violating their duty of loyalty to Appellant in the first instance. Our profession is rooted in our individual and collective duty of loyalty to our clients. Turner Padget is a large influential law firm. I respectfully submit that their representation of the Respondent in any capacity before this Court, or any court, is improper *per se*, has complicated and made the litigation substantially more time-consuming and expensive than necessary, has provided the Respondent with an unfair advantage of acute significance, has made all proceedings in which counsel for Respondent participated *void ab intio* and most importantly, has violated the trust of the profession and the Appellant. Counsel for Respondent is solely responsible for the resulting expenses associated with their simultaneous dual representation of clients with adverse interests. Appellant further respectfully submits that the representation by counsel for Respondent in this Court is a separate and distinct violation under Rule 1.7 of the undivided duty of loyalty to Appellant.

In addition to the foregoing, the order for summary judgment of the circuit court was clearly filed several weeks after the order for disqualification was appealed to this Court and when this Court had exclusive jurisdiction of the appeal and case at bar. The circuit court did not possess subject-matter jurisdiction of the case at the time the order was filed. By granting the Respondent summary judgment after the filing of the notice of appeal in regard to the order of disqualification, the lower court effectively mooted the Appellant's right to have the order of disqualification determined on appeal in accordance with the plain wording, spirit and intent of the Supreme court's decision in *Hagood v. Sommerville,* 362 S.C. 191, 607 S.E.2d 707 (2005).

Thanking you in advance for your consideration, I remain

Sincerely yours,



Benjamin R. Matthews

Enclosures

cc: Renee Josey, Esquire
Jay James, Esquire