

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Appellate Case No.: 2012-213052

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RECEIVED  
JUL 01 2013  
SC COURT OF APPEALS

Pee Dee Health Care, P.A., Tony R. Megna, Josiah S. Matthews,  
M.D., Alexander H. Cohen, M.D., HTR Management, LLC, MCHG, LLC,  
Katie Noyes, Mark S. Callahan, Warren Mark Matthews, Sr.,  
Benjamin R. Matthews, Eileen Segers, Mary C. Megna, Kim Weatherford,  
Barbara Stokes, and Kim Munn,

Appellants

vs.

1. Attorneys:

Nettles Turbeville and Reddick, E. LeRoy Nettles, Sr., Elbert K. Turbeville,  
Larry G. Reddick, the McNair Law Firm, Celeste T. Jones, and

2. Current Board members of the Lower Florence Hospital District  
[all being sued in their individual capacities]:

Scott W. Askins, James H. Clarke, W. "Scotty" P. Campbell, Floyd L. Keels,  
and William "Billy" Morris, all in their individual capacities, and

3. Past Board members of the Lower Florence Hospital District  
[both being sued in their individual capacities]:

Joe Landrum, Dan Buschard, and

4. Lake City physicians:

David W. Moon, Albert D. Mims, Ernest M. Atkinson, Richard Ellis,  
Daniel DeCamps, Steven Askins, Benjamin Wade Lamb,  
James J. Thomy, Sabrina G. O'Brien, Kristopher Crawford, Brad Russell,  
Marshall W. White, and

5. Employees (or former employees) of Lake City Community Hospital:

Mike Faucette, Carmen Polly Holt, Mary Dukes, Pete Bowman, Iris Hanna, John R. "Buddy" Watkins, and

6. Unidentified persons including but not limited to:

(a) unidentified employees of Lake Community Hospital who were:

- (i) stationed at Lake City, SC hospital campus [including its medical offices] and
- (ii) stationed at the Johnsonville, SC medical office, and

(b) others, whose names and identities are unknown to the Plaintiffs, who participated with the Defendants in regard to the acts and omissions complained of by Plaintiffs as stated herein, all such Defendants whose names are unknown to Plaintiffs, and who are identified herein as multiple Jane Does and multiple John Does,

and

Lower Florence District Board d/b/a Lake City Community Hospital,

Defendants.

OF WHOM

Nettles Turbeville and Reddick, E. Leroy Nettles, Sr., Elbert K. Turbeville, Larry G. Reddick, the McNair Law Firm, and Celeste T. Jones are

Respondents.

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**Respondents' Return to Appellants' Motion to Reinstate**

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents McNair Law Firm, Celeste T. Jones, Nettles Turbeville & Reddick, E. Leroy Nettles, Sr., Elbert K. Turbeville, and Larry G. Reddick ("Respondents") file this return to the Appellants' motion to reinstate the appeal. The Appellants' motion to reinstate is

untimely and the Appellants have failed to show good cause for failing to comply with the Court's prior orders. The motion should be denied.

The Appellants filed notices of appeal on September 26, 2012. On October 23, 2012, Appellants filed their first motion for a thirty (30) day extension of time for filing the Initial Brief and Designation of Matter. Although Appellate Rule 240 provides that the filing of a motion does not stay the time limits imposed by the rules, Appellants made no filing by November 26, 2012. On December 5, 2012, Respondents filed a supplemental motion to dismiss for failure of the Appellants to comply with the time deadlines. Appellants made no return to that motion. On January 18, 2013, the Court issued an order denying the Respondents' motion to dismiss and granted the Appellants an additional thirty (30) days to file the Initial Brief and Designation of Matter. On February 19, 2013, Appellants filed a motion for an additional fifteen (15) day extension for filing the Initial Brief and Designation of Matter. On March 8, 2013, the Court entered an order granting the extension until March 15, 2013. The Appellants failed to file within the time provided in the Court's second extension and on March 26, 2013, the Respondents filed their second motion to dismiss the appeal. On June 6, 2013, the Court granted this motion, dismissing the Appellants' appeal.

As with all other actions by the Appellants in this appeal, their motion to reinstate the appeal is untimely. Rule 260, SCACR, provides that if an appeal is dismissed, the Clerk shall remit the case to the lower court "unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of the filing of the order of dismissal (the day of the filing being excluded)." The order dismissing the appeal was filed June 6, 2013. The fifteenth (15<sup>th</sup>) day, the last day for filing a motion to reinstate,

was June 21, 2013. Appellants' motion to reinstate was not filed until June 24, 2013, and was not timely and should be denied.

The Appellants' have failed to show good cause for reinstatement of the appeal. Under the Court's first order granting an extension of time for filing, the Initial Brief and Designation of Matter were due on February 19, 2013. On that date Appellants filed their second motion, requesting an additional fifteen (15) day extension. On March 8, 2013, the Court entered an order extending the time for the Initial Brief and Designation of Matter to March 15, 2013. On March 26, 2013, when Appellants had still not filed the Initial Brief and Designation of Matter, the Respondents filed their second motion to dismiss the appeal. In this motion the Respondents set out a timeline of events which had occurred, including the Court's March 8, 2013, order granting the requested extension. The Appellants filed no return to this motion nor took any other action to file the Initial Brief or Designation of Matter. The Appellants' only attempt to show good cause for reinstatement of the appeal is a statement that counsel did not receive a copy of the March 8, 2013 order. Appellants do not plead that they made any attempt to ascertain the status of their second motion for an extension of time, which was filed February 19, 2013. Similarly, Appellants do not plead any attempt to file their briefs even though Appellants allege they are ready to be filed, Further, no mention is made of the Respondents' second motion to dismiss which was properly served upon counsel for the Appellants and it clearly showed that the requested extension had been granted and the Initial Brief and Designation of Matter was due March 15, 2013. Still, the Appellants made no filing, nor sought an additional extension of time, nor made reasonable inquiry of the Court concerning the status of their motion. The Appellants have repeatedly failed

to meet the timelines set forth in the Appellate Rules, even as extended by the Court. The Appellants have failed to show good cause for this failure to comply with the Appellate Court Rules and the requirements set forth in the Court's orders.

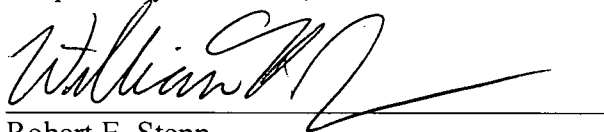
The requirement for good cause is important. The Rules regarding this Court's filing requirements are clear and mandatory. These Rules themselves authorize the clerk to "issue an order of dismissal," without further action of this Court, "[w]henever it appears that an appellant . . . has failed to comply with the requirements of these Rules." Rule 260(a), SCACR. While the Supreme Court ruled that Rule 260(a) did not require the dismissal of a timely-filed brief that was not correctly organized, the Court did observe that the Appellate Court Rules are not "mere technicalities." Henning v. Kaye, 307, S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Appellants' inadequate attempt to show good cause mandates the dismissal of the motion to reinstate in order to demonstrate that the Rules are meaningful and that a party's violation of the Rules may leave that party at peril.

### **CONCLUSION**

The Court granted the Respondents' motion to dismiss the appeal for failure of the Appellants to comply with the Appellate Rules and Court orders. The Appellants' motion to reinstate was neither timely filed nor have the Appellants shown good cause why the appeal should be reinstated. The Appellants' motion should be denied.

[Signature Page Follows]

Respectfully submitted,



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—and—

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G. Reddick*

Columbia, South Carolina

July 1, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Case No.: 2011-CP-21-00841

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Nettles Turbeville and Reddick E.  
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Pee Dee Health Care, P.A. et al.,

Appellants.

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**PROOF OF SERVICE**

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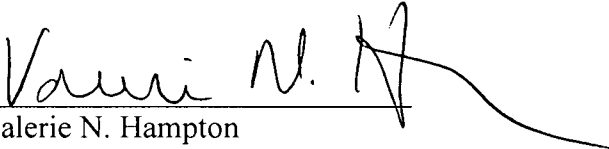
I hereby certify that I served a copy of Respondents' Return to Appellants' Motion to Reinstate upon counsel of record and all interested parties, as reflected below, by placing same in the United States mail, postage prepaid, this 1st Day of July, 2013.

Aimee Zmroczek, Esquire  
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Valerie N. Hampton

July 1, 2013

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: Pee Dee Health Care, P.A., et al. v. McNair Law Firm, P.A., et al.  
Appellate Case No.: 2012-213052  
Civil Action No.: 2011-CP-21-841  
ALI # 22274  
SGS&L File No.: 5866/1532

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of Respondents' Return to Appellants' Motion to Reinstate. We would appreciate your filing as appropriate and returning a clocked-in copy via our courier.

By copy of this letter and as evidenced by the Proof of Service, we are serving a copy of same upon the Appellants.

Very truly yours,



William H. Jordan

cc: Aimee Zmroczek, Esquire  
Lawrence B. Orr, Esquire  
Bradish J. Waring, Esquire  
M. Craig Garner, Jr., Esquire

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