

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-16-0332

Ex Parte:)

Desa Ballard)

In re:)

Pee Dee Health Care P.A.,)

Plaintiff,)

Vs.)

Estate of Hugh S. Thompson)

Defendant.)

**ORDER FOR SANCTIONS
AGAINST TONY R. MEGNA**

Non-party Desa Ballard moved for sanctions, pursuant to Rule 11(a), SCRPC, in connection with a subpoena for records served on her on or about July 30, 2011, ostensibly issued by the plaintiff in this action. The motion is granted.

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As will be discussed in more detail below, in order to reach a decision in this case this Court also was assigned jurisdiction in a Richland County case, *James A. Anastasi v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576. Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anasti* case in Richland, a case that had nothing to do with the

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CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

In granting the sanctions motion in this case, the Court makes the following:

FINDINGS OF FACT¹

1. This action was originally filed in the Darlington County Probate Court by the plaintiff corporation seeking to recover damages from the defendant. The plaintiff corporation was represented by attorney Tony R. Megna (Megna). The matter was removed to the Circuit Court in Darlington County.
2. After removal to this Court, defense counsel made a motion to disqualify attorney Megna from representing the corporate plaintiff, alleging Megna was a necessary witness in that he was, and had been since 1995, the Chief Executive Officer of the plaintiff corporation.
3. By order dated April 15, 2011, this Court made detailed findings of fact concluding that Megna was, in fact, a material witness as to core facts in this action and was disqualified from acting as counsel for the corporate plaintiff. The final sentence of that order stated "The Court orders complete disqualification effective with the execution of this Order. (footnote omitted)."
4. The Court thereafter permitted Megna, at his request, to remain counsel for the plaintiff for the sole and limited purposes of arguing his motion for reconsideration of the disqualification Order and for arguing summary judgment motions. The motion to reconsider was eventually denied, and the issue of Megna's disqualification as

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¹ The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both the Richland County case and the instant case, the submissions of counsel, and the oral argument held in these consolidated matters in Darlington County on March 15, 2012.

counsel is on appeal to the South Carolina Court of Appeals as of this writing. As well, Defendant was subsequently granted summary judgment. An appeal from that Order is also pending. No stays were issued by the appellate court. Megna's disqualification to act as counsel in this matter is currently in effect.

5. When Megna was disqualified as counsel in this case, there was separate and unrelated litigation involving different parties pending in the Richland County Court of Common Pleas in a matter entitled *James A. Anasti v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576 (the Richland case). Megna represented defendant Gina L. Lee in the Richland County case.
6. Other than Megna being counsel for a party in each case, the two cases are completely unrelated to one another. Megna is the only common denominator.
7. As more fully detailed in an Order issued this date in the Richland case, there have been numerous state court appellate proceedings, all initiated by Megna on behalf of his client Gina Lee, as well as bankruptcy proceedings involving Lee as the debtor in the United States Bankruptcy Court for the District of South Carolina.
8. In the Richland case, the plaintiff James Anasti was represented by attorney Douglas N. Truslow (Truslow). Truslow continued to represent Anasti throughout the several state appeals initiated by Megna on behalf of Lee, all of which appeals were subsequently dismissed based on procedural grounds; the merits of the appeals could not be reached because of Megna's repeated failures to comply with various deadlines.

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9. In attempts to escape the consequences of his failure to comply with the rules, Megna made false statements to the circuit court and the appellate court, as more fully described by Judge L. Casey Manning in Orders dated April 8, 2008 and April 1, 2009 in the Richland case, where he found Megna's explanations for his delay to be false and intentionally manipulative.
10. According to Truslow, because of appellate and ethical issues he encountered in dealing with Megna in the Richland case, Truslow associated and consulted with Ballard, who has experience in both fields. In September, 2011, in connection with one of the appeals filed by Megna (on behalf of Gina Lee) at the South Carolina Court of Appeals, Ballard executed an affidavit which Truslow submitted to the Court of Appeals addressing the insufficiency of an appellate documents filed by Megna.
11. On or about July 30, 2011, Ballard was served with a subpoena signed by Megna as counsel for the plaintiff, bearing the caption in this case, seeking production of certain materials, including copies related to her communications with several attorneys, including Truslow, several of the lawyers involved in this case, and other lawyers which apparently have no relation to this case or the Richland case.
12. Ballard was not counsel for nor otherwise involved in the instant case in any way. The subpoena sought information related to the assistance she provided to Truslow in the Richland County case, and sought to discover if any evidence existed of her communications with a list of attorneys whom Megna apparently believed to be his adversaries in this or other cases. The subpoena sought nothing relevant to this case. The subpoena purported to be issued from Darlington County, although Ballard's

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office is in Lexington County. The subpoena to Ballard did not comply with the SCRPC.

13. Ballard had no knowledge of the instant case, but when she received the subpoena, she located information to identify some of the attorneys involved. She obtained a copy of this Court's Order dated April 15, 2011, in which Megna was disqualified as counsel for the corporate plaintiff in this case.
14. Ballard filed and served an Objection to the subpoena. Since Megna had been disqualified in this case as counsel for the plaintiff, she served her objection on attorney Benjamin R. Matthews, who was listed on the Darlington County Clerk's website as Megna's law partner and also counsel for the plaintiff in the instant case.
15. She also filed and served a Motion for Sanctions on August 4, 2011, which argued that Megna had attempted to subpoena her records for an improper purpose, and in violation of this Court's order disqualifying him as counsel.
16. Truslow also filed a motion for sanctions in the Richland County case dated March 9, 2012. Ballard's motion for sanctions in this case was consolidated with Truslow's motion for hearing before this Court.
17. Prior to the hearing in this matter, Megna provided the Court and counsel with a document, bearing the caption in both cases, entitled "Synopsis." This document contained a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others. As best the Court can understand Megna's allegations against Ballard, they arise from a contact to her office by Megna in which he sought to associate her on a potential unrelated case on behalf of Pee Dee Health Care. Ballard's associate responded that Ballard would consider looking at the matter if she

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was paid hourly and she never heard back from Megna. She was never asked to represent Megna and no confidential information concerning Megna or his client was provided to her². Neither Megna nor his client contacted Ballard again until the subpoena was issued in this case.

18. In order to understand why Megna's efforts to subpoena information from Ballard were improper, a brief history of the litigation in the Richland case is necessary. By Order issued this same date in that case, that history is set forth in detail, and to the extent necessary, the findings in that Order are incorporated herein by reference.

19. By way of summary, the subpoena to Ballard was part of an improper and impermissible attempt by Megna to engage in discovery for purposes of defending himself (not his client) against motions for sanctions that were pending against him in the Richland County case. In addition, it appears that the subpoena was served on Ballard in an effort to punish her for consulting with Truslow in the Richland County case, and to deter her from continuing to assist him.

20. At the time Megna served the subpoena on Ballard, all discovery in the Richland County case had been concluded, Megna's client was no longer an active party to the Richland case, and the only remaining issues in that case in which Megna had any interest concerned the Richland Plaintiff's motions (via Truslow) for sanctions against Megna.

21. The subpoena issued to Ballard sought, among other things, her records of communications with Mr. Truslow in the Richland County case. This Court

² Even if the information provided by Megna to Ballard concerning Pee Dee Health Care was considered confidential information under Rule 1.6, and even if Ballard received and reviewed the material, this court finds she would not have been disqualified from continuing to assist Truslow in the Richland case. As stated earlier, the two cases are unrelated, the only common denominator again being Mr. Megna (representing two separate and unrelated clients in the two cases).

specifically finds there could be no other purpose for the discovery sought but to use the information to defend Truslow's claim for sanctions against Megna in the Richland case.

22. The subpoena to Ballard was issued in violation of this Court's order disqualifying Megna as counsel, sought privileged information regarding the advice she had given to Truslow, and constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose, *inter alia*, of seeking to deflect sanctions against himself in the Richland case.
23. Between his conduct in this case and in the Richland case, Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client.
24. The inevitable conclusion is that Megna has, under the auspices of this case, attempted to subpoena Ballard, as well as her legally protected files, even though he has been disqualified, and that his intentions were fully improper. The Court has no choice but to conclude that he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow in the Richland case.
25. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Richland case and he is in willful violation of this Court's orders, specifically including the Order disqualifying him as counsel for the plaintiff. He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in the Richland County case.

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26. Megna's conduct is willful, deliberate and unapologetic. In both his "Synopsis" (captioned with both cases) and the memorandum he submitted to the Court in connection with the hearing in this matter, Megna continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and others who he considers to be adverse to him.

27. Perhaps the most egregious part of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court would be faced with an entirely different scenario if Megna had admitted his misconduct and shown remorse in any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.

28. The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court.

29. Even viewed separately from Megna's conduct in the Richland case, Megna's conduct is ill-conceived, vitriolic, and abusive. When viewed in conjunction with the lengthy period during which he has engaged in similar conduct in the Richland case (as more thoroughly discussed in an Order issued this date), Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court and his colleagues in the process.

30. Ballard has requested an award of sanctions pursuant to Rule 11(a), SCRPC, for her time in having to respond to the subpoena served upon her by Megna. I find that sanctions under Rule 11(a) are warranted. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996).

31. Ballard's original affidavit of fees includes time she has spent in responding to two (2) grievances filed against her with the Office of Disciplinary Counsel which contain similar allegations as those asserted against her in these proceedings by Megna. Those two grievances (which were dismissed) were filed by Mark Matthews, who appears (from the Court's review of filings by Megna in this case) to be an employee and agent of either Megna or Pee Dee Health Care.

32. Although the Court perceives it is highly likely that Megna participated in or facilitated the filings of these grievances against Ballard, this Court concludes that her time spent in defending against these grievances is not within the scope of sanctions which this Court can award under Rule 11(a) or otherwise. At the Court's request, Ballard has submitted an amended affidavit of attorney fees which does not include the time spent in responding to the grievances. She has also included her time spent in attending the hearing on May 15, 2012 and her work since then, including the preparation of a proposed order for the Court, all of which are appropriate.

33. The Court's review of this affidavit finds that the time Ballard spent in responding to the subpoena, appearing before this Court, and preparing the draft order requested by this Court are reasonable.

34. Ballard's hourly rate is her regular hourly rate charged to her clients, and in light of her standing in the legal community and her expertise in these areas, is immensely reasonable. Ballard is a recognized expert in the field of attorney conduct (and misconduct), she has an AV rating with Martindale Hubbell, and she has earned the respect of her peers and of the Courts of this state for her professionalism as a member of the Bar. Her experience and insight in the areas in which Truslow was

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attempting to defend against Megna in the Richland case made her an appropriate choice for assistance to Truslow. Her agreement to assist Truslow in the Richland case made her a target of Megna's wrath, and she should be compensated by way of sanctions against Megna for the time she spent in responding to his improper discovery against her. The costs set forth in her affidavit, which consist of filing fees, copying costs and postage, are reasonable and were necessarily incurred in connection with the subpoena served upon her and the subsequent sanctions motion against Megna.

35. Pursuant to Rule 11(a), SCRPC, this Court awards sanction in favor of Ballard against Megna in the amount of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents (\$17,388.75), which constitutes reimbursement for the time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory, and are required to be paid notwithstanding any penalties imposed herein. *Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012).

36. The award of fees and costs herein are a sanction (and hence considered to be non-dischargeable except by payment), as well as a civil money judgment so as to carry interest at the legal judgment rate. The Clerk is directed to enroll this sum as a civil judgment in favor of Ballard against Megna.

37. In making this award, the Court is aware of the sanctions also being awarded to Truslow against Megna in the Richland County case. The sanctions awarded to Ballard are not duplicative of the sanctions awarded to Truslow, and the Court finds that both awards are compensatory in nature and are warranted, reasonable, and

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supported by the evidence. The sanctions are awarded to pay the reasonable attorneys fees and costs incurred by the moving party. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

Criminal Contempt Citation Against Mr. Megna, sua sponte


In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Richland County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Megna is hereby specifically

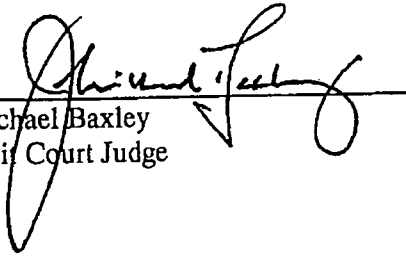
advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Megna.

Because of the numerous occasions on which Megna has denied receipt of service of an order or other papers (in the Richland case), Ballard shall make arrangements for personal service of a copy of this Order and the Richland County order issued this date upon Megna, unless Megna personally (not through counsel) consents to accept service in some other fashion and executes a written acceptance of service to that effect.

THEREFORE IT IS ORDERED:

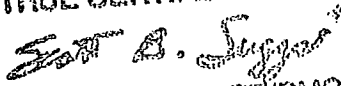
- 
1. Ms. Ballard's motion for sanctions is granted.
 2. Mr. Megna is ordered to pay Ms. Ballard the sum of seventeen thousand, three hundred and eighty-eight dollars and seventy-five cents (\$17,388.75) within thirty (30) days of the date of this Order. The Clerk shall enroll a civil judgment for this sum.
 3. Mr. Megna shall be required to show cause why he should not be held in criminal contempt of this Court for the actions outlined in this Order, and shall appear on March 18, 2013, at 2:00 p.m. in the fifth floor courtroom of the Darlington County courthouse for such hearing.

IT IS SO ORDERED.


J. Michael Baxley
Circuit Court Judge

February 11, 2013

FILED
2013 FEB 13 PM 2:47
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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CLERK OF COURT/RMG
DARLINGTON COUNTY S.C.

STATE OF SOUTH CAROLINA
 COUNTY OF DARLINGTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-16-0332

Pee Dee Health Care, PA

Estate of Hugh S. Thompson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

2011 FEB 13 PM 2:46
 FILED
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.
 SCOTT B. SUGGS

INFORMATION FOR THE JUDGMENT INDEX

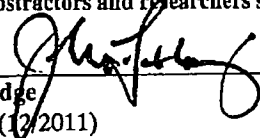
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Desa A. Ballard, Esquire	Tony R. Megna	\$17,388.75
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

TRUE CERTIFIED COPY
 Scott B. Suggs
 CLERK OF COURT/PMC

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge
 SCRPC Form 4C (12/2011)

2121 Judge Code
 2-11-13 Date
 Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin R. Matthews, Esquire
3400 West Avenue
Columbia, SC 29203

Jon Rene Josey, Esquire
Post Office Box 5478
Florence, SC 29502
John J. James, II, Esquire
Post Office Box 507
Darlington, SC 29540

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.