

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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69097

Pee Dee Health Care, P.A. [PDHC], Tony R. Megna,  
Josiah S. Matthews, M.D., Alexander H. Cohen, M.D.,  
HTR Management, LLC, MCHG, LLC [MCHG],  
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,

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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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**Motion to Strike Appellants' Brief and Designation of Matter or in the Alternative to Stay the Time for Respondents to Serve and file their Initial Brief and Designation of Matter**

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Pursuant to Rule 208(a)(4) 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”) hereby move for an order striking the initial brief and designation of matter submitted to the Court by Appellants for filing on July 10, 2013. Respondents received a copy of these documents and the letter submitting them to the Court for filing on July 11, 2013.

Alternatively, Respondents seek an order staying the time for Respondents to serve and file their initial brief and designation of matter until a time established by the Court following a decision on the motion to reinstate the appeal.

This motion is based upon the fact that the Court on June 7, 2013 entered an Order dismissing this appeal because of the failure of Appellants to file their initial brief and designation of matter notwithstanding having been granted two extensions of time to do so. This Order remains in effect. On June 24, 2013, Appellants filed a motion to reinstate the appeal. That motion is pending. The submission to the Court of the initial brief and designation of matter on July 10 was almost four months after the expiration of the last extension granted to Appellants, which ran until March 15, 2013. As the Court noted in the Order dismissing the appeal, Appellants did not seek any further extensions. Nor did Appellants respond in any way to the motion to dismiss the appeal filed by Respondents on March 26, 2013, or make any effort to file their brief and designation of matter. Pursuant to Rule 240(e), Appellants’ failure to file a return to the motion to dismiss was a consent to the dismissal of the appeal, which itself fully justified the Court’s Order of dismissal.

Under these circumstances, there is no procedural basis for the Court to accept the brief and designation of matter. The appeal has been dismissed and has not been reinstated. Nor have Appellants shown any good cause for reinstatement, as is pointed

out in Respondents return to the motion to reinstate filed on July 1, 2013. Appellants' argument that they were unaware that the last extension had been granted by the Court is inconsistent with the failure of Appellants to oppose or otherwise communicate with the Court in response to the motion to dismiss. It is further inconsistent with the failure of Appellants to attempt to file the brief and designation at the time the motion to reinstate was filed or as soon as Appellants became aware that the extension had been granted.<sup>1</sup> Finally, the argument proffered by Appellants is inconsistent with their counsel's explanation to defense counsel of the cause of the delay. The letter by which the brief and designation of matter were served, a copy of which is attached hereto as Exhibit A, refers to a federal RICIO matter as the apparent cause of the delay, even though no further extension of time had been sought.

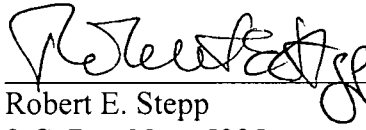
Respondents therefore seek an order striking the initial brief and designation of matter from the record and directing the Clerk to return them to Appellants pending a decision on the motion to reinstate the appeal. In the alternative, Respondents seek an order staying the time to file and serve their initial brief and designation of matter until a time established by the Court after the motion to reinstate has been decided.

[signature block on following page]

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<sup>1</sup> The motion to reinstate recites that "Appellants' counsel has the brief's [sic] ready to file," although it was not submitted until three weeks later. Of course, under Rule 240(a) the filing of the motion did not stay the deadline to file the brief and designation of matter, and the documents should therefore have been submitted to the Court at the very first moment they were ready.

Respectfully submitted,



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Robert E. Stepp  
S.C. Bar. No.: 5335  
Roland M. Franklin, Jr.  
S.C. Bar. No.: 14247  
William H. Jordan  
S.C. Bar. No.: 76172  
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1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
Telephone: 803-929-1400  
Facsimile: 803-929-0300

***Attorneys for Defendants McNair Law Firm, P.A.  
and Celeste T. Jones***

—and—

Lawrence B. Orr  
S.C. Bar. No.:  
Kathy Price Elmore  
S.C. Bar. No.:  
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S.C. Bar. No.:  
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P.O. Box 2527  
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Telephone: (843) 667-6613

***Attorneys for Nettles Turbeville & Reddick, E.  
Leroy Nettles, Sr., Elbert K. Turbeville, and Larry  
G. Reddick***

Columbia, South Carolina

March 26, 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.  
Leroy Nettles, Sr., et al.,

Respondents,

vs.

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' Motion to Strike Appellants' Brief and Designation of Matter or in the Alternative to Stay the Time for Respondents' to Serve and file their Initial Brief and Designation of Matter upon counsel of record and all interested parties, as reflected below, by placing same in the United States mail, postage prepaid, this 15<sup>th</sup> Day of July, 2013.

Aimee Zmroczek, Esquire  
A. J. Z. Law Firm, LLC  
Post Office Box 11961  
Columbia, South Carolina 29211-1961

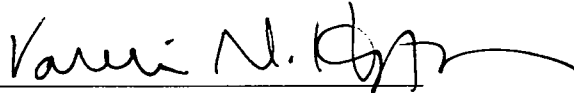
Lawrence B. Orr, Esquire  
Orr Elmore & Ervin, LLC  
Post Office Box 2527  
Florence, South Carolina 29503

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G. Murrell Smith, Jr., Esquire  
Lee, Erter, Wilson, Holler and Smith, LLC  
Post Office Box 580  
Sumter, SC 29151

  
Valerie N. Hampton

# **EXHIBIT A**

## A. J. Z. Law Firm, LLC

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1001 Washington Street, Suite 207  
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Phone: (803) 400-1918  
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Aimee J. Zmroczek, Attorney  
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July 10, 2013

Robert E. Stepp, Esquire  
Sowell Gray  
Post Office Box 11449  
Columbia, South Carolina 29211

Lawrence B. Orr, Esquire  
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Post Office Box 580  
Sumter, South Carolina 29151

RE: Pee Dee Health Care, P.A., et al. v. McNair Law Firm, P.A., et.al.  
Appellate Case No. 2012-213052

Dear Gentlemen:

Enclosed please find a copy of the Initial Brief of Appellants and Designation of Matter in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

I apologize for the delay in serving these items and as I stated in my previous filing, I was awaiting the decision of the Court of Appeals and with moving offices did not receive that correspondence. As an officer of the court, I can tell you that my delay has not been intentional or in any way meant to prejudice the parties or disrespect the Court or the Judicial system. Now

## A. J. Z. Law Firm, LLC

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Phone: (803) 400-1918  
Fax: (803) 403-8005

**Aimee J. Zmroczek, Attorney**  
(803) 400-1918  
[ajzlawfirm@gmail.com](mailto:ajzlawfirm@gmail.com)

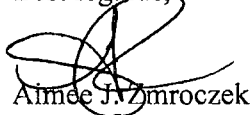
Christina Metze, paralegal  
(803) 256-1268 then press 3  
[christina.ajzlawfirm@gmail.com](mailto:christina.ajzlawfirm@gmail.com)

**M. Wade Downtin, Attorney**  
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that the Federal RICO trial for which I was preparing has plead, I assure you I will comply with all deadlines.

Please call me if you have any questions.

Best regards,



Aimee J. Zmroczek

Enclosures

July 15, 2013

**VIA HAND DELIVERY**

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

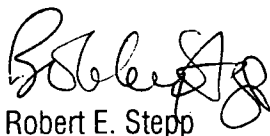
Re: Pee Dee Health Care, P.A., et al. v. McNair Law Firm, P.A., et al.  
Appellate Case No.: 2012-213052  
Civil Action No.: 2011-CP-21-841  
ALI # 22274  
SGS&L File No.: 5866/1532

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of Respondents' Motion to Strike Appellants' Brief and Designation of Matter or in the Alternative to Stay the Time for Respondents' to Serve and file their Initial Brief and Designation of Matter. I also enclose our firms' check in payment of the filing fee. 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,

  
Robert E. Stepp

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

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