

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated, Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are Appellants,

v.

The Bishop of Charleston, a Corporation Sole; The Bishop of the Diocese of Charleston, in his official capacity, Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC Intervenors.

**DAVID K. HALLER, LAWRENCE E. RICHTER, JR.,
AND RICHTER & HALLER, LLC’S MOTION TO DISMISS**

David J. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC (collectively, “Richter & Haller”) submit this motion to bring to the Court’s attention the failures of the Appellants, Julie McDonald and Richard McDonald (“Appellants”), to assemble, file and serve the record on appeal as required by the South Carolina Appellate Court Rules and this Court’s Order filed February 29, 2024. Based upon those failures and the grounds set forth below, Richter & Haller move this Court to dismiss this appeal.

I. Appellants Failed to Serve the Record on Appeal

Appellants never served the record on appeal pursuant to the Appellate Court Rules. The Court's February 29, 2024, Order directed Appellants to "serve and file the record on appeal within fifteen days," or by March 15, 2024. They failed to do so. Rule 210 requires service of the "Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court." Rule 210(a), SCACR. Rule 262(c), SCACR, allows for service by "electronic means in a manner provided by order of the Supreme Court of South Carolina." In 2022, the Supreme Court expanded means of service to include service by e-mail. (Order Appellate Case No. 2020-000447, entered May 6, 2022.) However, "[d]ocuments must be e-mailed as an attachment in .pdf. In the absence of consent, a lawyer serving a document by e-mail may not utilize another file format or a file-sharing service. For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document." *Id.* (emphasis added). "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties." Rule 260, SCACR.

On March 14, 2024, Appellants' counsel submitted a four-volume record on appeal and proof of service. He e-mailed the Court of Appeals Clerk's Office a signed proof of service stating he had served the record on appeal by e-mail on counsel of record. He had not. Instead, he attempted to utilize a file sharing system, WeTransfer, which is the very method the Supreme Court has deemed insufficient absent consent. Appellants' counsel never even requested consent. When Appellants' counsel e-mailed the proof of service to the Clerk of Court's Office, he

neglected to include the other attorneys of record on those communications. Noticeably absent from the March 14th proof of service is the very document the Supreme Court requires to be included when service is accomplished by e-mail: a copy of the sent e-mail demonstrating that the document was in fact served as an attachment on the other attorneys of record. Appellants are unable to provide a copy of that e-mail serving the record on appeal because it does not exist, and it does not exist because Appellants' counsel failed to comply with the Appellate Court Rules governing service. Therefore, Appellants failed to serve the record on appeal by any of the methods provide in Rule 262(c)(1)-(3), SCACR.

While Appellants' counsel claims the record was too large to be e-mailed, his actions belie that statement. On March 14, 2024 at 12:53 PM, Appellants' counsel e-mailed the other attorneys a "corrected" copy of Volume 4 of the record on appeal on March 14, 2024. That volume was attached as a PDF to an e-mail. Why he failed to e-mail the other volumes as attachments remains a mystery.

Eleven days later, on March 25, 2024, Appellants' counsel e-mailed counsel of record that he had "omitted pages 1148 to 1196 from Volume 3 of the Record on Appeal in the class action appeal" and would be sending another file sharing link with the corrected volume.

On March 28, 2024, the undersigned responded and requested clarification about the record on appeal. Prior to filing this motion, the undersigned also raised the issue regarding service with Appellants' counsel. In response, Appellants' counsel simply insisted he served the record on appeal by e-mail. Contrary to that position, to date Appellants have yet to serve the record on appeal pursuant to the applicable Appellate Court Rules. Copies of communications with Appellants' counsel are included with this motion as exhibits for the Court's review.

The Appellants' failure to serve the record on appeal as required by the Appellate Court

Rules and this Court's Order entered February 29, 2024, is fatal to their appeal and warrants dismissal pursuant to Rule 260, SCACR. Moreover, this development is surprising given the history of this litigation that such a deficiency would occur.

A prior appeal arising from this same litigation was concluded when Appellants' counsel failed to follow court-mandated methods for electronic filing and service, instead attempting to use a file sharing. In that prior appeal, Appellants' counsel represented ten different "Doe" parties in eight different lawsuits asserting claims against Richter & Haller arising from this same class action litigation based upon theories of collusion, judge-shopping, fraud, and other wrongful acts. In 2017, the circuit court entered summary judgment in favor of Richter & Haller on all claims. The plaintiffs in those cases appealed. (*See generally*, Appellate Court Case No. 2017-001996.) Following oral argument, this Court affirmed in a *per curiam* opinion. (Op. No. 2021-UP-060, March 3, 2021.) The Court subsequently denied the appellants' motion for rehearing. (Order, May 13, 2021, entered Appellate Case No. 2017-001996.) Appellants' counsel attempted to file and serve a petition for certiorari. However, he did not use any of the various available methods the Supreme Court allowed for electronic service. Instead, he used the same file sharing service he has used here, WeTransfer.¹ The method was insufficient and failed to comply with the Appellate Court Rules. When the Court of Appeals issued the remittitur on June 24, 2021,² Appellants' counsel attempted to save the appeal, but his failure to follow the Appellate Court Rules was fatal. This Court rejected the various attempts to recall the remittitur, and the Supreme Court struck the petition for certiorari and dismissed the appeal.³ With that history, it is surprising

¹ Notably, the proof of service Appellants' counsel prepared stated he had served the documents by e-mail when in fact he had not; instead, he had attempted to serve them only through the file sharing service.

² Remittitur, Exhibit F.

³ Motion to Recall Remittitur, June 24, 2021, Exhibit G; Order of August 6, 2021, Exhibit H; Amended Motion to Recall Remittitur, September 2, 2021, Exhibit I; Return to Motion to Recall

in this case that Appellants' counsel has once again disregarded the Appellate Court Rules governing service. He may claim mistake or inadvertence, but he has repeated the very same error he made in the prior appeal. That is not mistake or inadvertence. He may claim the files were too large to e-mail, but his having e-mailed the "corrected" copy of Volume 4 disproves that claim, too. (He also could have utilized one of the various other means for service, like a ZIP file, multiple emails, or even the United States Postal Service.) Finally, Appellants' counsel may claim the proof of service he filed accurately represented to the Court that he caused "a copy of each volume of the Record to be sent electronically, via email." (See Proof of Service, March 14, 2024.) However, he knows, or at a minimum should know, (1) that absent consent service by e-mail requires the document to be served as an e-mail attachment and that attempts using a file sharing system are insufficient, (2) that he never obtained consent, and (3) that he did not e-mail the record as attachments. In light of these facts, Appellants cannot claim in good faith that they served the record on appeal in compliance with the applicable Appellate Court Rules, nor can they claim in good faith that their failure should be excused as the result of inadvertence or mistake or other good cause.

For these reasons, the appeal should be dismissed pursuant to Rule 260, SCACR.

II. Appellants Failed to Properly Prepare and File the Record on Appeal.

Appellants also failed to prepare and file the record on appeal as mandated by the Appellate Court Rules and this Court's Order entered February 29, 2024.

"The Record on Appeal shall include all matter designated to be included by any party under Rule 209." Rule 210(c), SCACR. "Appellant or his counsel shall certify that the Record

Remittitur, September 13, 2021, Exhibit J; Order of October 25, 2021, Exhibit K; Petition for Rehearing, November 8, 2021, Exhibit L; Letter from Kitchings, Exhibit M; Order of January 11, 2022, Exhibit N.

on Appeal contains all material proposed to be included by any of the parties and not any other material.” Rule 210(g), SCACR. According to the court filings available through the C-Track system, Appellants filed a four-volume record on appeal on March 14, 2024. As noted above, Appellants’ counsel later notified counsel of record on March 25th that Volume 3 failed to include forty-nine pages of matter that was designated. While Appellants’ counsel has since provided a complete copy of Volume 3 to the other attorneys, to date, Appellants still have not filed an accurate and complete copy of Volume 3 as required by the Court’s February 29, 2024 Order.

Richter & Haller also discovered material missing from the most recent version of the record on appeal the Appellants assembled. Appellants failed to include their motion to intervene filed August 29, 2022. That matter is item 5 on the designation the Diocese Respondents filed on August 23, 2023.

Finally, Appellants have failed to comply with the most rudimentary requirement of Rule 210(c) requiring consecutive page numbering. Rule 210(c), SCRCR (“Each page of the Record on Appeal shall be numbered consecutively beginning with the index.”). Page 116 is out of order, appearing between pages 122 and 123; there is no page 615; and an April 30, 2013 Order of the Supreme Court of South Carolina has been included in the record with no page numbering at all.

In short, Appellants failed to serve the record on appeal; they failed to file the record as required by the Court’s Order; and the record as it exists today, is fraught with deficiencies in violation of the Appellate Court Rules.

CONCLUSION

The Intervenors, Richter & Haller, would therefore show Appellants’ failures to serve the record and to prepare and file the record pursuant to the Appellate Court Rules and this Court’s February 29, 2024 Order, as set forth in more detail above, warrant dismissal of this appeal

pursuant to Rule 260, SCACR.

Respectfully Submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

/s/ Benjamin C. Bruner

Benjamin C. Bruner, Bar No. 77544

Chelsea J. Clark, Bar No. 102211

Post Office Box 61110 (29260)

1735 St. Julian Place, Suite 200 (29204)

Columbia, South Carolina (803) 252-7693

bbruner@brunerpowell.com

cclark@brunerpowell.com

*Attorneys for Lawrence E. Richter, Jr. and
Richter & Haller, LLC*

GALLIVAN, WHITE & BOYD, PA

/s/ John E. Cuttino

John E. Cuttino, Bar No. 1519

Post Office Box 7368 (29202)

1201 Main Street, Suite 1200 (29201)

Columbia, South Carolina

(803) 724-1714

jcuttino@gwblawfirm.com

Attorney for David K. Haller

April 3, 2024
Columbia, South Carolina

From: [G Meyers](#)
To: [Rich Dukes](#); [Sammataro, Sam](#); [John E. Cuttino \(jcuttino@gwblawfirm.com\)](#); [Chelsea Clark](#); [Forsberg, Paige E](#); [Ben Bruner](#); [Allen Sires](#)
Subject: Volume 4
Date: Thursday, March 14, 2024 12:53:51 PM
Attachments: [Record on Appeal Volume 4 of 4.pdf](#)

Counsel:

It appears I inadvertently identified the cover of volume 4 as volume 3. Corrected volume attached

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com



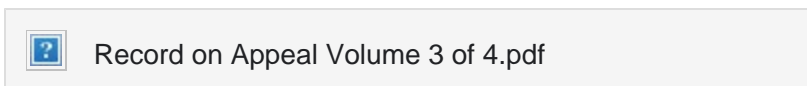
This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

From: [G Meyers](#)
To: [Rich Dukes](#); [Sammataro, Sam](#); [John E. Cuttino \(jcuttino@gwblawfirm.com\)](#); [Chelsea Clark](#); [Ben Bruner](#)
Cc: [Forsberg, Paige E](#); [Allen Sires](#)
Subject: Volume 3 of the Record on Appeal
Date: Monday, March 25, 2024 3:44:48 PM

Counsel:

It appears I omitted pages 1148 to 1196 from Volume 3 of the Record on Appeal in the class action appeal.

A Google drive link to a corrected copy of the Record Volume 3 is attached. My apologies for the omission.



Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

From: [G Meyers](#)
To: [Ben Bruner](#)
Subject: Re: Volume 3 of the Record on Appeal
Date: Thursday, March 28, 2024 12:22:12 PM



Ben:

I uploaded six files through the link you sent me. The files are too large to email directly, so wetransfer is a file-transfer site. I included the proof of service page so you can work out the date final briefs are due. I think it is April 3.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

On Thu, Mar 28, 2024 at 11:17 AM Ben Bruner <bbruner@brunerpowell.com> wrote:

I am not familiar with WeTransfer. I guess I was looking for an e-mail with all the PDFs or something more in line with the Rules.

Can you just upload the record using this link?
<https://brunerpowell.app.box.com/f/c7247c7a069c488b8d2a9e8dcb795b1f>

I need to calendar my deadline. When did you serve the record? On March 25th? Or some earlier date?

Sincerely,

Ben

Benjamin C. Bruner



P.O. Box 61110
Columbia, SC 29260-1110
(P) 803.252.7693
www.BrunerPowell.com

From: G Meyers <attygm@gmail.com>
Sent: Thursday, March 28, 2024 11:55 AM
To: Ben Bruner <bbruner@brunerpowell.com>
Subject: Re: Volume 3 of the Record on Appeal

Ben:

Thanks for your email.

Yes, I sent the rest of the record some time ago, via a file transfer site called Wetransfer. Perhaps it got caught up in a filter. I am glad to send it all again and will do so now.

Gregg Meyers
Attorney At Law

843-324-1589

attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

On Thu, Mar 28, 2024 at 9:27 AM Ben Bruner <bbruner@brunerpowell.com> wrote:

Gregg,

I am having trouble tracking this. Have you served the rest of record yet? If so, when? And how was that accomplished?

Sincerely,

Ben

Benjamin C. Bruner



P.O. Box 61110
Columbia, SC 29260-1110
(P) 803.252.7693
www.BrunerPowell.com

From: G Meyers <attygm@gmail.com>

Sent: Monday, March 25, 2024 3:44 PM

To: Rich Dukes <RDukes@turnerpadget.com>; Sammataro, Sam <SSammataro@turnerpadget.com>; John E. Cuttino (jcuttino@gwblawfirm.com) <jcuttino@gwblawfirm.com>; Chelsea Clark <cclark@brunerpowell.com>; Ben Bruner <bbruner@brunerpowell.com>

Cc: Forsberg, Paige E <pforsberg@turnerpadget.com>; Allen Sires <allensires@icloud.com>

Subject: Volume 3 of the Record on Appeal

Counsel:

It appears I omitted pages 1148 to 1196 from Volume 3 of the Record on Appeal in the class action appeal.

A Google drive link to a corrected copy of the Record Volume 3 is attached. My apologies for the omission.



Gregg Meyers

Attorney At Law

843-324-1589

attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

From: [Ben Bruner](#)
To: [G Meyers](#)
Cc: [John E. Cuttino \(jcuttino@gwblawfirm.com\)](#); [Chelsea Clark](#); [Bridget Steele](#)
Subject: RE: 2023-000720 Final Briefs
Date: Monday, April 1, 2024 10:50:00 AM



Gregg:

A few questions here:

1. Since Allen Sires is not a party (his appeal was dismissed), why do you continue to serve him with filings?
2. The record on appeal has some irregularities, including:
 - a. You included the Offer of Proof the McDonalds submitted to Judge Taylor. I have reviewed all the parties' designations of matter and do not see that matter designated anywhere.
 - b. We designated the McDonald's petition and proposed complaint to the South Carolina Supreme Court. The copies of those items included in the record you uploaded to my system last week does not contain filed copies of those documents. I have not yet been able to determine if there are other filings for which you did not include the file stamped copy, but I believe it is important that the file stamped copies be included to demonstrate those things were in fact filed and are not drafts.
 - c. The Index for the record on appeal contains inaccuracies that need to be corrected:
 - i. The Order we designated as Item 37 bears the wrong date;
 - ii. The April 15, 2009 letter included at page 1188 states it is from "class counsel" when in fact it is not from class counsel.
3. I do not believe the record on appeal was properly served. While the appellate court rules allow for service by e-mail, you did not do that. Instead, you used a file sharing system. That is only allowed with consent, and as far as I am aware you never even sought consent from us. This is the same thing that happened with the petition for cert in the prior appeal. Here, however, you filed a proof of service with the Court saying you served the record on us by e-mail when you did not. I am raising this issue with you before moving to dismiss the appeal entirely to see what if any response you have. Given the long and tortured history of this litigation and the baseless allegations you continue to levy at my client, we will proceed with the motion to dismiss unless

this issue is resolved in short order.

Sincerely,

Ben

Benjamin C. Bruner



P.O. Box 61110
Columbia, SC 29260-1110
(P) 803.252.7693
www.BrunerPowell.com

From: G Meyers <attygm@gmail.com>

Sent: Saturday, March 30, 2024 3:54 PM

To: Rich Dukes <RDukes@turnerpadget.com>; Sammataro, Sam <SSammataro@turnerpadget.com>; John E. Cuttino (jcuttino@gwblawfirm.com) <jcuttino@gwblawfirm.com>; Chelsea Clark <cclark@brunerpowell.com>; Ben Bruner <bbruner@brunerpowell.com>; Forsberg, Paige E <pforsberg@turnerpadget.com>; Allen Sires <allensires@icloud.com>

Subject: 2023-000720 Final Briefs

Counsel:

Attached please find the Final Briefs, certificate, and proof of service for appellants' final briefs.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.



From: [G Meyers](#)
To: [Ben Bruner](#)
Cc: [Rich Dukes](#); [John E. Cuttino \(jcuttino@gwblawfirm.com\)](#); [Chelsea Clark](#); [Sammataro, Sam](#); [Forsberg, Paige E](#)
Subject: Record on Appeal
Date: Monday, April 1, 2024 9:16:27 PM

Ben:

I don't understand your service point. The proof of service says I served it by email. That is accurate. It does not say I served it by email from my Gmail account. Nor could I have as the files were too large. The file-transfer service uploads the information and then notified you and other counsel - by email - that the files were available for download. And the files were actually received.

But if you think that is the basis for dismissal, go for it.

The Diocese designated as their item 7 the Amended Memo of the McDonalds, which is a reference to the Offer of Proof.

Of the Petition in the Original Jurisdiction, I didn't have the file-stamped copy from the Court, only what I submitted. If you find a difference please let me know, but I included what I sent to the court so there won't be any differences. If I have a file-stamped copy I prefer to include those, but it is the same pleading.

The Index for page 1341 of the record does bear the wrong date. I am glad to correct that.

The description for page 1188 is incorrect. The letter came from Mr. Shahid, not class counsel. I have corrected it.

I will check to see if Rich or other counsel has any proposed changes.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 24, 2021

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210



REMITTITUR

Re: John Doe v. The Bishop of Charleston (2)
Lower Court Case No. 2010CP1005520
Appellate Case No. 2017-001996

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
Benjamin C. Bruner, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Chelsea Jaqueline Clark, Esquire

The State of South Carolina
In The Supreme Court

RECEIVED

Jun 24 2021

SC Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Circuit Court Judge
Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and
Father Doe 245, and John Doe 297,

Appellants,

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop Of Charleston, in his official capacity; Rev. Monsignor
Martin Laughlin, former Administrator of the Diocese of Charleston,
in his official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents.

Motion to Recall Remittitur and accept Petition for A Writ of
Certiorari To the Court of Appeals

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for Plaintiffs – Appellants

Other Counsel of Record:

Richard S. Dukes, Jr.
Turner Padget
40 Calhoun Street, Suite 200
PO Box 22129
Charleston SC 29413-2129
Attorney for Respondent The Diocese of Charleston et al.



Benjamin C. Bruner
Chelsea J. Clark
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place Suite 200
Columbia SC 29204
Attorneys for Respondent Richter and Richter & Haller, LLC

Susan Taylor Wall
Henry W. Frampton, IV
Gordon & Rees
40 Calhoun Street Suite 350
Charleston SC 29401
Attorneys for Respondent David K. Haller

The fee for this motion will be sent by mail.

On June 24 the Court of Appeals issued the remittitur in this appeal.

On June 14, counsel had served, and thought he had filed, a Petition for *Certiorari* to the Court of Appeals. Upon investigation, counsel discovered that the Supreme Court had not accepted the June 14 filing due to the file transfer method by which counsel sent the voluminous record on appeal and other documents associated with the Petition.

The Court had attempted to alert counsel to the method the court preferred for accepting a voluminous filing. Counsel's mother passed away June 12 in Minnesota, and since the 12th counsel has been out of South Carolina dealing with the family matters in Minnesota related to her death. Counsel is still in Minnesota and has not yet set a date to return to his office in South Carolina. Only this morning did counsel become aware that the means of transmission for the Petition for *Certiorari* was not the means preferred by the Court. The omission was inadvertent.

The Petition itself was sent again this morning by email to supctfilings@sccourts.org, and is attached to this motion, in the same form and with the same typographical errors as submitted June 14.. In addition, today a link has been sent to the Court by the OneDrive means preferred by the Court for a voluminous filing. All counsel were served with the Petition on June 14, and are

again served with this motion, as the accompanying Proof of Service reflects, along with the Court of Appeals.

Conclusion

With apologies to the Court and counsel, we ask that the Court recall the remittitur, accept the Petition as of June 14, and continue to process this appeal.

Respectfully submitted,

A handwritten signature in blue ink that reads "Gregg Meyers". The signature is written in a cursive style with a large, stylized "G" and "M".

Gregg Meyers, SC Bar No. 9908
Of Counsel, Pierce Hems Sloan & Wilson LLC
321 East Bay Street
Charleston SC 29401
843-722-7733, 843-722-7732 facsimile
greggmeyers@phswlaw.com

November 13, 2017

Ruth Weese
1554 Chastain Road
Johns Island, SC 29455
County: Charleston (Circuit: 9)

Re: Doe 202 v North Charleston et al., 2014-CP-0-4591

Dear Ms. Weese:

You were the court reporter during the first week of two week trial that began October 2, 2017.

This is to request the transcript of the proceedings in that trial from the week of October 2 to Friday, October 6.

Of course I will be responsible for the fees associated with that transcript. Please consider this my order for the transcript.

Thank you very much.

Sincerely,

Gregg Meyers

c: Counsel for Respondents

November 13, 2017

Joyce Reuger
P.O. Box 1472
Johns Island , SC 29457
County: Charleston (Circuit: 9)

Re: Doe 202 v North Charleston et al., 2014-CP-0-4591

Dear Ms. Reuger:

You were the court reporter during the second week of a two week trial that began October 2, 2017. Your portion began October 9 and went until October 13.

This is to request the transcript of the proceedings in that trial from the week of October 9 to Friday, October 13.

Of course I will be responsible for the fees associated with that transcript. Please consider this my order for the transcript.

Thank you very much.

Sincerely,

Gregg Meyers

c: Counsel for Respondents

November 13, 2017

Hon. Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Doe 202 v North Charleston et al., 2014-CP-0-4591

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal and Amended Notice of Appeal in the case captioned above.

Also enclosed are the following:

1. Proof of service of the Notice of Appeal and Amended Notice of Appeal on counsel for the Respondents,
2. A copy of the jury verdict in the case, from which appeal is taken. The two other orders in the case are contained only in the transcript, which has been requested,
3. A filing fee of \$100,
4. A copy of the letter to the clerk of the lower court filing the notice of appeal. And
5. A copy of two letters to the court reporters who, combined, covered the trial ordering the transcript of the proceedings below.

Please file this notice with the Court. Thank you very much.

Sincerely

Gregg Meyers

c: Counsel for Respondents

November 13, 2017

Hon. Julie A. Armstrong
Clerk of Court
Charleston County Circuit Court
100 Broad Street
Charleston SC 29401

Re: Appeal in 2014-CP-10-4591, Doe 202 v. North Charleston et al.

Dear Julie:

Enclosed for filing is a Notice of Appeal and Amended Notice of Appeal in the case captioned above, tried before Judge Jefferson.

Also enclosed are the following:

1. A copy of the Proof of Service of the Notice of Appeal and Amended Notice of Appeal on counsel for the Respondents,
2. A copy of the one written order involved in the appeal, the other orders not being written, other than the jury verdict, which is attached, and
3. A copy of the letter to the Clerk of the Court of Appeals.

Please file these notices with the Court. Thank you very much, and best personal regards.

Sincerely

Gregg Meyers

c: Counsel for Respondents

November 13, 2017

Chris Dorsel
Senn Legal, LLC
3 Wesley Drive
Charleston SC 29407

Re: Appeal of orders

Dear Counsel:

Enclosed for filing is a Notice of Appeal and Amended Notice of appeal and related documents in what we have been calling the Diocese and Lawyer cases.

I have ordered the transcript of the proceedings.

Best personal regards.

Sincerely

Gregg Meyers

Encl.

Notice of Appeal
Amended Notice of Appeal

c: Counsel for Respondents

RECEIVED

Jun 24 2021

SC Court of Appeals

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Hon. J.C. Nicholson, Circuit Court Judge
Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and
Father Doe 245, and John Doe 297,

Appellants

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop Of Charleston, in his official capacity; Rev. Monsignor
Martin Laughlin, former Administrator of the Diocese of Charleston,
in his official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents

Proof of Service

I hereby affirm that pursuant to SCACR 226C I have served upon counsel for the
defendants/respondent one copy of the Appellant's

**Motion to recall remittitur and accept the June 14 Petition for
Certiorari, with attachment**

by causing the documents and a copy of this Proof of Service to be sent via email to:

supctfilings@sccourts.org
South Carolina Supreme Court
1231 Gervais Street
Columbia SC 29201

RDukes@turnerpadget.com

Richard S. Dukes, Jr.
Turner Padget
40 Calhoun Street, Suite 200
PO Box 22129
Charleston SC 29413-2129
Attorney for Respondent The Diocese of Charleston et al.

BBruner@brunerpowell.com
cclark@brunerpowell.com
Benjamin C. Bruner
Chelsea J. Clark
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place Suite 200
Columbia SC 29204
Attorneys for Respondent Richter and Richter & Haller, LLC

swall@grsm.com
hframpton@grsm.com
Susan Taylor Wall
Henry W. Frampton, IV
Gordon & Rees
40 Calhoun Street Suite 350
Charleston SC 29401
Attorneys for Respondent David K. Haller

And to

ctappfilings@sccourts.org
Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
PO Box 11629
Columbia, SC 29211

The Supreme Court of South Carolina

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Petitioners,

v.

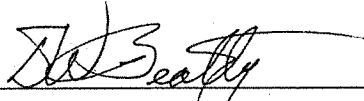
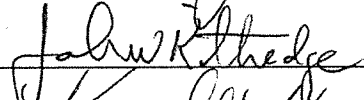
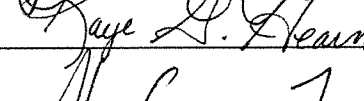
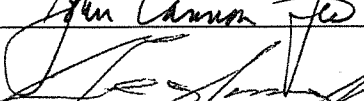
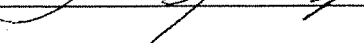
The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2021-000668

ORDER



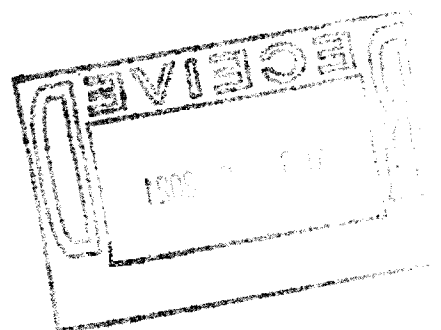
On March 3, 2021, the court of appeals affirmed the order of the circuit court granting summary judgment to Respondents in this matter. Petitioners' petition for rehearing was denied on May 13, 2021. When no petition for a writ of certiorari was received by the court of appeals, it sent the remittitur on June 24, 2021. Petitioner has now filed a motion to recall the remittitur with this Court. We deny the motion without prejudice to Petitioner's right to move the court of appeals to recall the remittitur.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
August 6, 2021

cc:

Richard S. Dukes, Jr., Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Benjamin C. Bruner, Esquire
Chelsea Jaqueline Clark, Esquire
The Honorable Jenny Abbott Kitchings



The State of South Carolina
In The Court of Appeals

RECEIVED

Sep 02 2021

SC Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Circuit Court Judge
Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and
Father Doe 245, and John Doe 297,

Appellants,

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop Of Charleston, in his official capacity; Rev. Monsignor
Martin Laughlin, former Administrator of the Diocese of Charleston,
in his official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents.

Motion to Recall Remittitur

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for Plaintiffs – Appellants

Other Counsel of Record:

Richard S. Dukes, Jr.
Turner Padget
40 Calhoun Street, Suite 200
PO Box 22129
Charleston SC 29413-2129
Attorney for Respondent The Diocese of Charleston et al.

Benjamin C. Bruner



Chelsea J. Clark
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place Suite 200
Columbia SC 29204
Attorneys for Respondent Richter and Richter & Haller, LLC

Susan Taylor Wall
Henry W. Frampton, IV
Gordon & Rees
40 Calhoun Street Suite 350
Charleston SC 29401
Attorneys for Respondent David K. Haller

Motion to Recall Remittitur

The fee for this motion will be sent by mail. A Proof of Service accompanies this motion.

On June 24 the Court of Appeals issued the remittitur in this appeal. The same day counsel filed a motion in the Supreme Court to recall the remittitur in light of a June 14 Petition for *Certiorari*. Counsel has received today the Supreme Court's order of August 6 denying Petition to Recall the Remittitur.¹

On June 14, counsel had served, and thought the Supreme Court had accepted, a Petition for *Certiorari* to the Court of Appeals in this matter. Upon investigation after the remittitur issued, counsel discovered that the Supreme Court had received but not accepted that filing due to the electronic file transfer *method* by which counsel had sent the voluminous record on appeal and other documents associated with the Petition.

The Supreme Court's order denying the Motion to recall the remittitur was without prejudice, permitting a similar motion to the Court of Appeals. This is that motion, and it rests on the disruption caused by counsel's mother's death.

The June 14 Petition for *Certiorari* was sent to the SC Supreme Court June 24 by email to suptfilings@sccourts.org. That Petition is also attached to this motion, in the same form and with the same typographical errors as submitted June 14 and again on June 24. On August 25 the S.C. Supreme Court modified the appellate rules so as to eliminate the requirement for the record on appeal to accompany the Petition for *Certiorari*, the requirement that prevented the June 14 Petition from simply being emailed to the Supreme Court.

None of this confusion would have occurred but for the disruption to counsel from his mother's death.

¹ That order was not emailed, only sent via US Mail by the Supreme Court. Counsel's mother passed away June 12 in Minnesota, and since June 12 counsel has been out of South Carolina dealing with family matters associated with her death. Counsel expects to be able to return to his office in South Carolina on September 20.

Conclusion

With apologies to the Court and counsel, we ask that the Court recall the remittitur, so the Supreme Court can act on the Petition first sent to the Court on June 14.

Respectfully submitted,

A handwritten signature in blue ink that reads "Gregg Meyers". The signature is written in a cursive style with a large, stylized "G" and "M".

Gregg Meyers, SC Bar No. 9908
217 Lucas Street F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

The State of South Carolina In The Supreme Court

Appeal from Charleston County
Hon. J.C. Nicholson, Circuit Court Judge
Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and
Father Doe 245, and John Doe 297,

Appellants,

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop Of Charleston, in his official capacity; Rev. Monsignor
Martin Laughlin, former Administrator of the Diocese of Charleston,
in his official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents.

Petition for A Writ of *Certiorari* To the Court of Appeals

Gregg Meyers, SC Bar No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for Plaintiffs – Appellants

Other Counsel of Record:

Richard S. Dukes, Jr.
Turner Padget
40 Calhoun Street, Suite 200

PO Box 22129
Charleston SC 29413-2129
Attorney for Respondent The Diocese of Charleston et al.

Benjamin C. Bruner
Chelsea J. Clark
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place Suite 200
Columbia SC 29204
Attorneys for Respondent Richter and Richter & Haller, LLC

Susan Taylor Wall
Henry W. Frampton, IV
Gordon & Rees
40 Calhoun Street Suite 350
Charleston SC 29401
Attorneys for Respondent David K. Haller

Index

Table of Cases, Statutes, and Other Authorities	1
Certificate of Counsel	2
Questions Presented	2
Statement of the Case	2
Argument	6
1. The lower courts have erred in determining that because <i>In re Green</i> , 291 S.C. 523, 354 S.E.2d 557 (1987) and <i>Premium Investment Corp.</i> <i>v. Green</i> , 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984), predated SCRCP 23 that class counsel owed no fiduciary duty to absent class members in pleading a class action, or settling a class action, instead finding class counsel owed no duty to the class until an attorney-client relationship was formed at class certification?	6
2. The lower courts erred in concluding appellants were not damaged when the collusive change to the notice program deprived appellants of the benefit of the defenses waived for class members?	10
3. The Court of Appeals erred in determining that there had been “adequate time for discovery” as to damages, when even the trial court recognized that full discovery has not been permitted in any case and in two cases no discovery at all has yet been permitted and a separate discovery schedule was needed for those cases?	11
Conclusion	11

Table of Cases

<i>Cohen v Beneficial Indus. Loan Corp.</i> , 337 U.S. 541, 69 S.Ct. 1221 (1949)	7-8
<i>Doe v. Bishop</i> , 407 S.C. 128, 754 S.E.2d 494 (2014)	4
<i>Doe v. Howe</i> , 367 S.C. 432, 626 S.E.2d 25 (2005)	2
<i>In re Green</i> , 291 S.C. 523, 354 S.E.2d 557 (1987)	2, 5, 6, 7, 10
<i>Moore v. Moore</i> , 360 S.C. 241 (Ct. App. 2004)	10
<i>Moriarty v. Garden Sanctuary Church of God</i> , 341 S.C. 320, 534 S.E.2d 672 (2000)	9
<i>Premium Investment Corp. v. Green</i> , 283 S.C. 484, 324 S.E.2d 72 (Ct. App. 1984)	2, 5, 6, 7, 10
<i>Tilley v. Pacesetter Corporation</i> , 355 S.C. 381, 585 S.E.2d 292 (2003)	7
Fed. R. Civ. P. 23	7
SCRCP 23	2, 7, 8
September 2007 South Carolina Lawyer, "Ethics Watch," by John Freeman	8

Certificate of Counsel

Petitioner's counsel certifies that on May 13, 2021, the Petition for Rehearing was denied by the Court of Appeals. R. App. 3061.

Questions Presented

1. Have the lower courts erred in determining that because *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984), predated SCRCP 23 that class counsel owed no fiduciary duty to absent class members in pleading a class action, or settling a class action, instead finding class counsel owed no duty to the class until an attorney-client relationship was formed at class certification?
2. Have the lower courts erred in concluding appellants were not damaged when the collusive change to the notice program deprived appellants of the benefit of the defenses waived for class members?
3. Has the Court of Appeals erred in determining that there had been "adequate time for discovery" as to damages, when even the trial court recognized that full discovery has not been permitted in any case and in two cases no discovery at all has yet been permitted and a separate discovery schedule was needed for those cases?

Statement of the Case

This appeal turns on the first question presented: whether SCRCP 23 eliminated the fiduciary obligations that (until the trial court's ruling in this action) imposed as a matter of law on counsel who allege a class action; or who reach a class settlement; or who move to certify a class. Other issues are subsidiary to that novel question and are properly remanded for reconsideration if in considering the first question presented the court overturns the lower courts.¹ E.g., *Doe v. Howe*, 367 S.C. 432, ___, 626 S.E.2d 25, 27-28 (2005) (vacating and remanding decision on breach of fiduciary duty for ambiguity in the trial court's rationale).

¹ Subsidiary questions that will be briefed if the Petition is granted will include the lower

The record below is full of irregularities from the 2006 class settlement at issue in this appeal. On this record, it must be presumed that the class action was collusive. A class settlement was reached seven months after the class case was filed, without a single motion having been argued or decided, or a single deposition taken. (Compare, R. App. 256, the Charleston class complaint filed December 2, 2005, with R. App. 592 – 595, the June 14, 2006, handwritten class settlement agreement reached in mediation).

After the settlement, the parties did not submit the class settlement for approval as required by SCRCP 23. Instead, through less-than-candid procedures outside of SCRCP 23 the parties moved the class settlement to a preferred judge in another circuit. E.g., R. App. 315 (first motion to approve class settlement, made in Dorchester County). Pertinent to this appeal, after filing a motion to certify the class, but before class certification, the parties agreed to change the notice program for the class from the nationwide notice originally proposed (R. App. 317, proposing notice in *USA Today*) to (in effect) notice in only South Carolina (R. App. 324, eliminating notice in *USA Today*), essentially eliminating any chance of notice to persons such as appellants, who resided outside of South Carolina. The motion to certify was amended for that change to the notice program. (R. App. 322).

The lack of nationwide notice was one of the objections made by other abuse victims who objected to aspects of the proposed class settlement. (R. App. 369, 383). While no explanation about the change to the notice program was given to the trial court reviewing the class settlement, and neither inquiry nor order was made by that court even after the objections to

court's conclusion that, as out-of-state residents, appellants were not within the class definition; that John Doe 193 could make no claim for breach of fiduciary duty; that the lower court's "alternative pleading" theory barred appellants who resolved their claims against the Diocese from making a claim against class counsel.

the change to the notice program brought it to her attention, class counsel later represented in these proceedings (in a 2014 hearing) that the change was made by class counsel to accommodate a request by the Bishop of Charleston, his supposed adversary. R. App. 2435.²

Despite a 2009 order from the Supreme Court, R. App. 85, no final order has ever been entered in the class action case, so no appellate review has ever occurred of the conduct of the class action.³ (E.g., R. App. 474 – 481: a final accounting was proposed to the trial court by class counsel in March 2008 but never acted upon).

A series of cases are consolidated in this appeal. The earliest were filed in 2010,⁴ the most recent cases were filed in 2015 and 2016,⁵ after remand of *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (S.C. 2014), the first appeal related to how the absent class members' interests were not protected. Despite the holding of *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (S.C. 2014),⁶ full discovery as to class counsel's conduct has not been permitted in any case. Judge Nicholson

² Counsel for class counsel: "Our testimony will be that we proposed that [nationwide notice] to the Bishop and that the Bishop said, no, that's too expensive."

³ Implicit in this appeal is whether the collusive strategy of ignoring S.C. Supreme Court orders, such as the 2009 order to conclude the class action, or the holding of *Doe v. Bishop*, discussed below, is as acceptable to the Supreme Court as it has been to the lower courts.

⁴ E.g., R. App. 532, 2010 complaint for John Doe 2 and Jane Doe 4.

⁵ E.g., R. App. 1208 (Complaint for Jane Doe 240); R. App. 1230 (Complaint for John Doe 240); R. App. 1253 (Complaint for John Doe 245 and Father Doe 245); R. App. 1346 (Complaint for John Doe 297).

⁶ *Doe v. Bishop*, 754 S.E.2d at 501 (S.C. 2014): "Should appellants establish on remand that they were denied due process owing to lack of notice or because of inadequate representation in the class action proceedings, and that the statute of limitations was tolled, they may proceed to further prosecution of their claims." While that opinion presumes that class counsel owed a duty to absent class members, the lower courts disagree.

acknowledged that the 2015 and 2016 cases, in which no discovery had been done, would require a further order of the court to permit discovery. R. App. 188. Nevertheless, in its brief decision, the substance of which is on two pages, the Court of Appeals determined there had been “adequate time for discovery.” R. App. 3030, making no distinction among cases with different complaints.

Summary judgment was granted in 2017 as to the claimed breaches of fiduciary duty by class counsel. R. App. 203. The trial court found class counsel owed no fiduciary duty to absent class members until a court certified a class, R. App. 217, discounting the obligations imposed at pleading by *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984). The rationale to discount those cases was because those cases were decided before the 1985 implementation of the Rules of Civil Procedure⁷ and because no class had been certified in the class case giving rise to those decisions. R. App. 217. The order contains no analysis about how SCRPC 23 changed those case holdings, and none is apparent.

Without a fiduciary duty owed by class counsel at any time before formal class certification, the trial court found that the pre-certification collaboration among the parties to change the notice program for the effective purpose of excluding class members who resided outside of South Carolina could not constitute aiding and abetting breach of fiduciary duty by the Diocese defendants. R. App. 193. For its part, the Court of Appeals refused to rule on the alleged breach of fiduciary duty claims made against the Diocese.

⁷ The order contains no analysis about how SCRPC 23 changed those case holdings, and none is apparent.

In a brief opinion, the Court of Appeals affirmed. R. App. 3029. The Court made no distinction among the complaints, which have evolved over time and more explicitly addressed the “alternative pleading” argument accepted by the Court of Appeals. Class counsel had first begun making that “alternative pleading argument” in 2014, R. App. 2407, so successive complaints in 2015 and 2016 grew more explicit about the request for only one recovery, as opposed to alternative claims for liability. In other words, not all complaints are identical.

A petition for rehearing was denied by the Court of Appeals. R. App. 3061 .

Argument

1. SCRCP 23 makes no change to the holdings of *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984). A fiduciary duty to absent members of a class begins at pleading a class action.

For the core question in this petition — the duty owed by class counsel upon pleading a class action, and the subsidiary issues that derive from the core issue — even though it might be helpful to bench and bar for the Court to do so, the Court need not wade into the extensive evidence of collusion or the judge-shopping that occurred in this record. Every court other than this Court (in 2014) has studiously avoided addressing how class counsel placed their own financial interests ahead of the class and deliberately compromised the interest of the absent class members they undertook to represent so as to accommodate a request of their “adversary.” Full discovery has not been permitted into class counsel’s class representation.

But if there is no duty to absent class members until certification, then class counsel can presumably manipulate the class action as exemplified not only in this record but also as exemplified in *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984).

As the case stands at present, it is apparently accepted that such manipulative conduct by class counsel is permitted, since class counsel has been construed to have no duty to the class prior to formal class certification.

Nothing about SCRCP 23 changes the rationale of *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) or *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984). SCRCP 23(d) requires a motion to certify a class be made “as soon as practicable” after the class action is filed. SCRCP 23(c) provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

SCRCP 23 embodies the Due Process obligations that protect absent class members. *Premium Investment Corp. v. Green*, 283 S.C. 484, ___, 324 S.E.2d 72, 76 (Ct. App. 1984): (internal citations omitted, emphases added) held:

a plaintiff who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action.*** The class representative also surrenders the right to settle the action in return for individual gain, alone.

If the class representative ***or class counsel*** breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class. This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

See also, *Tilley v. Pacesetter Corporation*, 355 S.C. 381, ___, 585 S.E.2d 292, 302 (2003) (class definition “a strategy choice” that the parties and class counsel “have to live with.”)

These holdings are consistent with Fed. R. Civ. P. 23, on which the South Carolina Rules are modeled. The Notes to SCRCP refer specifically to the federal rules of civil procedure, which have long held that counsel undertakes a fiduciary duty upon pleading a class action. E.g., *Cohen*

v Beneficial Indus. Loan Corp., 337 U.S. 541, 549, 69 S.Ct. 1221, 1227 (1949)

a stockholder who brings suit on a cause of action derived from the corporation assumes a position, not technically as a trustee perhaps, but one of a fiduciary character. He sues, not for himself alone, but as representative of a class comprising all who are similarly situated.

Until the trial court in this case concluded that it no longer had effect, *Premium Investment* held that upon *pleading* a class action class counsel assumes fiduciary duties to absent members of the class. Upon class *certification*, class counsel assumes an attorney-client relationship with class members, present and absent.

The commentary to SCRCP 23(d) reinforces the identical point:

This Rule requires those seeking to maintain an action on behalf of a class to notify members of the class of the pendency of the action.

That obligation is on “those seeking to maintain,” not just on “certified” class actions. As reflected in the Ethics Watch article by Professor Freeman from September 2007, R. App. 2092 – 2093, discussing both *Premium Investment* and *Green*:

In essence, the Supreme Court in *Green* held that a fiduciary obligation is owed by class counsel to putative class members so long as the case is postured as a class action regardless of whether a formal certification order has been issued.

Professor Freeman advised “so long as the caption claims the case is a class action, unless and until the class certification motion is denied or the class is decertified, class counsel must assume that a duty of loyalty and fair dealing is owed to absent class members.” *Id.* Yet the trial court and Court of Appeals disagreed.

Given the divergence between Professor Freeman’s academic commentary, Professor Virzi’s affidavits attached to the various complaints (E.g., R. App. 1045 – 1046), and the orders of the trial court and Court of Appeals, it obviously needs clarified by the Supreme Court if class counsel does or does not assume a fiduciary obligation upon alleging a class. Or moving to

certify a class. Or reaching a class settlement. The Petition should be granted to provide that clarity.

The collusive changes to the notice program matter. Absent class members were deliberately excluded from any chance of participation. Class counsel claimed in the record to have secured for all class members, known and unknown, the same agreement from the Diocese as was extended to class members: that the Diocese would waive its available defenses, including the statute of limitation and charitable immunity.⁸ But no written order secured that relief, so any class member who files an independent action against the Diocese must confront the defenses waived for class members.⁹ In many cases, that failure is fatal to an abuse victim being able to make a claim.¹⁰

⁸ Compare, R. App. 2312, in discussing four known abuse victims that had not been located and, as counsel for the Diocese put it, “anybody else who has kind of, lack of a better word, comes out of the woodwork,” class counsel responded with the claim, R. App. 2314, that the Diocese had supposedly agreed, that “if anybody has been missed” the Diocese “waives all the same defenses.”) No order secured that relief.

⁹ Although class counsel was aware of such claims, e.g., R. App. 409, 482, nothing in the class settlement provided for persons such as John Doe 193, who alone among appellants (a) resides within South Carolina and (b) had no memory of his abuse until 2010 (R. App. 1708, 2454). His complaint begins at R. App. 760. Unique among appellants, Doe 193 might conceivably avoid the statute of limitations under authority of *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). Judge Nicholson held he had not received Due Process in the class action. R. App. 179. But like every other appellant he is exposed to the other defenses the Diocese otherwise waived for the class. Had class counsel actually secured the relief he claimed for the clients he undertook to represent, none of these cases would be necessary.

¹⁰ The trial court concluded that there was no claim against class counsel because the failure by class counsel left the appellants in the same place they would have been without any class action case having been filed, R. App. 210, a truism that if accepted would nullify any claim for legal malpractice or breach of fiduciary duty. Such cases are *always* about a duty voluntarily assumed, conduct that would not exist but for the duties assumed.

As a result, even though class counsel undertook to represent appellants, class counsel cooperated with the Diocese to deprive appellants of any chance of obtaining the benefit of the defenses waived for class members. Those defenses explicitly included charitable immunity and the statute of limitations.

Without action by this Court, class counsel was, and future class counsel will be, entirely free to replicate the conduct in this record to remove notice so as to exclude absent class members, and arrange for the fee to be the highest priority of the class action. Additionally, class counsel would be free to replicate the conduct described in *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984), where a class was pleaded for effect and used to benefit counsel and the putative class representative. If the court does not accept the Petition, any class action can be manipulated however class counsel chooses, provided that manipulation is done prior to class certification.

2. The lower courts erred in concluding appellants were not damaged when the collusive change to the notice program deprived appellants of the benefit of the defenses waived for class members.

Among the subsidiary issues in this Petition are that the plaintiffs had no evidence of damage from any conduct by the lawyers. R. App. 210 (in the trial court); R. App. Court of Appeals decision at p. 3, R. App. 3030. “Damages in an action for breach of a fiduciary duty are those proximately resulting from the wrongful conduct of the defendant.” *Moore v. Moore*, 360 S.C. 241, 253 (Ct. App. 2004). Because class counsel was construed to owe no duty to absent class members until certification, the lower courts did not consider the damage from class counsel’s failures in (a) altering the notice program at the Bishop’s request to deliberately exclude appellants, and then (b) failing to mitigate that damage by securing in a written order the waiver of defenses they claimed to have secured for each class member. Each is a cognizable

damage, as set forth in the affidavits of Mr. Virzi. E.g., R. App. 1045 – 1046. Each absent class member is now compelled to confront the powerful defenses that the Diocese otherwise had waived.

3. The Court of Appeals erred in determining that there had been “adequate time for discovery” as to damages and class counsel’s conduct

As noted above, the trial court recognized that cases filed in 2015 and 2016 required a separate discovery order, as no discovery had been done. R. App. 188. If class counsel assumes a fiduciary duty to absent class members of the class upon pleading, the Court of Appeals plainly erred in concluding there had been “adequate time for discovery,” R. App. 3030, and the case should be remanded for further proceedings.

Conclusion

The petition for *certiorari* should be granted on the questions presented and the subsidiary issues that will be briefed if the Petition is granted.

Respectfully submitted,



Gregg Meyers, No. 9908
217 Lucas Street Unit F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

RECEIVED

Sep 02 2021

SC Court of Appeals

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Circuit Court Judge
Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and
Father Doe 245, and John Doe 297,

Appellants

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop Of Charleston, in his official capacity; Rev. Monsignor
Martin Laughlin, former Administrator of the Diocese of Charleston,
in his official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents

Amended Proof of Service

I hereby affirm that pursuant to SCACR 226C I have served upon counsel for the
defendants/respondent one copy of the Appellant's

Motion to recall remittitur, with attachment

by causing the documents and a copy of this Proof of Service to be sent via email to:

ctappfilings@sccourts.org
South Carolina Court of Appeals
122o Senate Street
Columbia SC 29211

RDukes@turnerpadget.com
Richard S. Dukes, Jr.
Turner Padget

40 Calhoun Street, Suite 200
PO Box 22129
Charleston SC 29413-2129
Attorney for Respondent The Diocese of Charleston et al.

BBruner@brunerpowell.com

cclark@brunerpowell.com

Benjamin C. Bruner

Chelsea J. Clark

Bruner Powell Wall & Mullins, LLC

1735 St. Julian Place Suite 200

Columbia SC 29204

Attorneys for Respondent Richter and Richter & Haller, LLC

swall@grsm.com

hframpton@grsm.com

Susan Taylor Wall

Henry W. Frampton, IV

Gordon & Rees

40 Calhoun Street Suite 350

Charleston SC 29401

Attorneys for Respondent David K. Haller

And to

suptctfilings@sccourts.org

South Carolina Supreme Court

1231 Gervais Street

Columbia, SC 29201

Done September 2, 2021



RECEIVED

Sep 13 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Civil Action Nos.: 2010-CP-10-05520, 2010-CP-10-07233,
2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175,
2013-CP-10-04176, 2015-CP-10-05486, 2016-CP-10-01632

Appellate Case No.: 2017-001996



John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11, John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and Father Doe 245, and John Doe 297,..... Petitioners,

v.

The Bishop of Charleston, A Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official Capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity; Robert J. Baker, former Bishop of Charleston, in his official Capacity; Lawrence E. Richter, Jr.; David K. Haller; and Richter and Haller, LLC;.. Respondents.

**JOINT RETURN OF RESPONDENTS LAWRENCE E. RICHTER, JR.,
DAVID J. HALLER, AND RICHTER AND HALLER, LLC
TO PETITIONERS’ MOTION TO RECALL REMITTITUR**

Respondents Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (the “Attorney Respondents”) jointly submit this Return to Appellants’ Motion to Recall the Remittitur in this matter filed by Appellants on September 2, 2021.

BACKGROUND

Appellants commenced an appeal on September 27, 2017 to orders of the Honorable J.C. Nicholson, Jr. During this appeal, the COVID-19 public health crisis caused the Supreme Court to prescribe protocols for, among other things, the electronic filing and service of papers. *See Order*

of the Sup. Ct. in Re: Operation of the Appellate Courts During the Coronavirus Emergency (filed March 30, 2020; amended May 29, 2020). With these COVID-19 protocols in place, this Court heard oral arguments in this case on September 15, 2020 via Webex. The Court affirmed Judge Nicholson's orders on March 3, 2021.

On March 17, 2021, Appellants filed a Motion for Rehearing, followed by returns filed on behalf of the Respondents on March 29, 2021. This Court denied the motion by Order entered and served on counsel of record on May 13, 2021. Appellants had 30 days to file and serve a Petition for Writ of Certiorari. They failed to do so.

Appellants contend they attempted to file a Petition for Writ of Certiorari on June 14, 2021. That attempt, however, failed to conform to any of the filing methods available to the Appellants, and the Attorney Respondents are aware of no record that either appellate court received the Appellants' attempted filings.¹

On June 24, 2021, having received no petition for writ of certiorari within the time prescribed by rule (plus an additional ten days), this Court sent the remittitur to the lower court. The issuance of the remittitur ended the appeal. Later that day, Appellants moved the Supreme Court to recall the remittitur. The Supreme Court denied that request on August 9, 2021 without prejudice in an order that was served on counsel of record. Appellants filed nothing until September 2, 2021, when their counsel contends he first received the Supreme Court's August 9, 2021 Order.

For the reasons set forth below, Appellants' motion (and amended motion) to recall the remittitur should be denied.

¹ Additionally, the proof of service included with the documents Appellants attempted to file did not include a date of service as required by the rule.

STANDARD OF REVIEW

When a remittitur has been properly dispatched to the lower court, the appellate court no longer has jurisdiction over the case. See Wise v. S.C. Dep't of Corrs., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (citing Mickle v. Blackmon, 255 S.C. 136, 177 S.E.2d 548 (1970); Thomas v. Lynch, 87 S.C. 44, 68 S.E. 817 (1910); Carpenter v. Lewis, 65 S.C. 400, 43 S.E. 881 (1903); State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893)). “The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court.” Id. (citing Keels, supra).

ARGUMENT

Appellants contend the remittitur should be recalled due to the alleged inadvertence of Appellants and their counsel, not because the Court of Appeals committed any error, mistake, or inadvertent act. The distinction is critical. Appellants’ failure to show any mistake, error, or inadvertence of this Court when is dispatched the remittitur is fatal to the motion to recall.

Rule 221(b), SCACR governs remittiturs. That rule provides in pertinent part,

Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

Id. If a petition for writ of certiorari is not filed within the time prescribed in Rule 242, SCACR, then the Court of Appeals shall send the remittitur to the lower court.

In this case, Appellants failed to file their Petition for Writ of Certiorari as required by rule. “A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.” Rule 242(c), SCACR. Under the Appellate Court Rules, filing is accomplished by hand-delivery, by

mailing, or by “electronic means in a manner provided by order of the Supreme Court of South Carolina.” Rule 262(a), SCACR. During the COVID-19 pandemic, the Supreme Court issued several orders introducing various methods of electronic filing. *See* Order of the Sup. Ct. in Re: Operation of the Appellate Courts During the Coronavirus Emergency (filed March 30, 2020; amended May 29, 2020). On June 14, 2021, the Supreme Court allowed parties to file by (1) delivering documents to a drop box at the Supreme Court, (2) mailing documents, (3) faxing documents, (4) electronic filing via OneDrive for Business, or (5) filing by e-mail. Id. Regarding filing by e-mail, the Court wrote:

During this emergency, filings may be made by e-mail. For the Supreme Court, the e-mail shall be sent to suptcfilings@sccourts.org; for the Court of Appeals, the e-mail shall be sent to ctappfilings@sccourts.org. *This method may not be suitable for large documents, and if it becomes necessary to split a document into multiple parts, the e-mail shall identify the part being sent (i.e., Record on Appeal, Part 1 of 4).* A document filed by this method must be in an Adobe Acrobat file format (.pdf). In the event the document requires a filing fee, a check or money order for the fee must be mailed to the Appellate Court within five (5) days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order. *A document transmitted and received by e-mail on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day.*

Id. (emphasis added).

Under the Appellate Court Rules, therefore, Appellants had three methods of electronically filing their return within the thirty-day deadline: (i) facsimile, (ii) OneDrive, or (iii) e-mail the documents as attachments, with the admonition that filing large documents by e-mail may not be suitable. *Appellants used none of these methods.* Instead, Appellants apparently tried to use a fourth method involving a cloud share. Neither the Appellate Court Rules nor the Court’s operative COVID order allowed for the method Appellants attempted to use. Furthermore, the Attorney Respondents are not aware that either appellate court received the documents Appellants now claim they attempted to file. A document cannot be deemed filed by e-mail if the appellate court never receives the e-mail. The COVID protocols and methods for electronic filing were in

place for over a year, and Appellants can offer no allowable explanation as to why they failed to submit the documents in one of the court-sanctioned filing methods.

On June 24, 2021, forty-two days after having denied Appellants' petition for rehearing, and having received no petition for writ of certiorari, the Court correctly sent the remittitur to the lower court. The Court did not do so by mistake, error, or inadvertence but rather in compliance with Rule 221(c), SCACR, and after Appellants' time to file and serve the petition for writ of certiorari had long expired. Prior to that time, Appellants' counsel had an additional ten days to follow-up with the appellate courts to ensure they received the petition for writ of certiorari but did not do so.

Remittiturs are final and divest the appellate court of jurisdiction unless the remittitur is sent down by mistake, error, or inadvertence *of the Court*. See Wise, at 174, 642 S.E.2d at 551 (emphasis added). A review of our State's jurisprudence reveals this standard is well-established and requires proof of mistake, error, or inadvertence on the part of the court or its officer. It is insufficient to show mistake, error, or inadvertence of a party's counsel. For instance, as early as 1893, the Court wrote:

In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer, and there is no pretense of any such showing in this case. It is not enough to show that the default of the appellant in perfecting his appeal was due to some excusable neglect, for the proper time to make such a showing would be when the motion to dismiss the appeal was made, or at least before the remittitur was sent down.

Keels, 17 S.E. at 802–03. South Carolina courts have consistently followed that standard as recently re-stated in Wise, where the Court held the remittitur was properly sent when a party's attorney failed to file a petition for reinstatement. See id. Over the past decades, the Supreme Court has considered many requests to recall the remittitur and counsel for the Attorney

Respondents have found no case granting the recall. See, e.g., State v. Barnes, 413 S.C. 1, 774 S.E.2d 454 (2015); Missouri v. State, 378 S.C. 594, 596, 663 S.E.2d 480, 481 (2008); McGill Bros. v. Seaboard Air Line R. R., 69 S.E. 670, 670 (S.C. 1910); Thomas v. Lynch, 87 S.C. 44, 68 S.E. 817, 817 (1910); McKenzie v. Sifford, 52 S.C. 394, 29 S.E. 811, 812 (1898); Millhouse v. Sally, 43 S.C. 318, 21 S.E. 885, 885 (1895); and State v. Merriman, 35 S.C. 607, 14 S.E. 394, 395 (1892).

The facts of this case do not justify this Court exercising recall of the remittitur. The only mistake, error, or inadvertence Appellants have identified is their own. The failure to follow the approved electronic filing methods and to follow-up to ensure the appellate courts received the documents was not the fault of this Court; rather, it was due to Appellants' own mistake, error, or inadvertence. Appellate court orders and rules set forth a protocol that Appellants did not follow, and South Carolina case law makes it clear that Appellants' failure and the issuance of the remittitur deprives the court of jurisdiction.

This is not the first occasion that Appellants have requested unusual relief from this Court. At the outset of this appeal, this Court dismissed the appeal after inquiring about Appellants' receipt of the transcript and receiving no response from Appellants. This Court eventually granted latitude to Appellants based upon their own inadvertence and allowed the appeal to proceed.

In their Motion to Recall the remittitur, Appellants again claim inadvertence. However, the issue before the Court on this motion requires evidence of mistake, error, or inadvertence *on the part of the Court*, not merely inadvertence of counsel. Appellants have not and cannot identify any mistake, error, or inadvertence *of the court* in sending the remittitur. The remittitur has now been filed with the lower court for months, further supporting denial of the motion.

[I]t must always be remembered that the [Respondent] to the cause has the right to the orderly disposition thereof, and that his rights must be respected, and that it is essential to the due and orderly administration of the law that the methods of procedure prescribed by the statutes and rules of court be complied with. Otherwise, there would be no end to litigation.

Thomas, 68 S.E. 817 at 817.

A number of these consolidated cases were pending for more than a decade. The compass of justice should now point toward finality, not toward perpetual litigation. This Court should not recall the remittitur, and Appellants' Motion to Recall Remittitur should be denied.

CONCLUSION

For the reasons discussed, the Attorney Respondents respectfully request that Appellants' Motion to Recall Remittitur be denied.

Respectfully submitted,

s/ Susan Taylor Wall

Susan Taylor Wall, S.C. Bar No. 5799

Henry W. Frampton IV, S.C. Bar No. 75314

GORDON & REES, LLP

40 Calhoun St., Suite 350

Charleston, SC 29401

(843) 714-2503

Attorneys for David. J. Haller

September 13, 2021

Charleston, South Carolina

s/ Benjamin C. Bruner

Benjamin C. Bruner, S.C. Bar No. 77544

Chelsea J. Clark, S.C. Bar No. 102211

BRUNER, POWELL, WALL & MULLINS, LLC

Post Office Box 61110

Columbia, SC 29260

803-252-7693

Attorneys for Lawrence E. Richter, Jr.

and Richter and Haller, LLC

September 13, 2021

Columbia, South Carolina

RECEIVED

Sep 13 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Civil Action Nos.: 2010-CP-10-05520, 2010-CP-10-07233,
2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175,
2013-CP-10-04176, 2015-CP-10-05486, 2016-CP-10-01632

Appellate Case No.: 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11, John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and Father Doe 245, and John Doe 297,..... Petitioners,

v.

The Bishop of Charleston, A Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official Capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity; Robert J. Baker, former Bishop of Charleston, in his official Capacity; Lawrence E. Richter, Jr.; David K. Haller; and Richter and Haller, LLC;.. Respondents.

PROOF OF SERVICE

The undersigning counsel hereby certifies that she served the **Joint Return of Respondents Lawrence E. Richter, Jr., David J. Haller, and Richter and Haller, LLC to Petitioners' Motion to Recall Remittitur** upon counsel by attachment to AIS-registered email, pursuant to Order of the Supreme Court in re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (filed August 25, 2021) on September 13, 2021, as follows:

Gregg E. Meyers (9908) attygm@gmail.com
Richard S. Dukes, Jr. (16563) rdukes@turnerpadget.com

s/ Chelsea J. Clark (102211)

September 13, 2021
Columbia, South Carolina

The South Carolina Court of Appeals

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Appellants,

v.

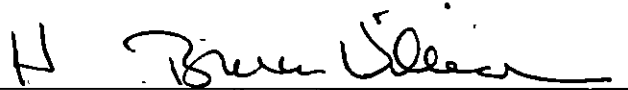
The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2017-001996

ORDER



This Court issued an opinion in this case on March 3, 2021. Appellants thereafter filed a petition for rehearing, which this court denied on May 13, 2021. The remittitur was sent on June 24, 2021. Appellants have now filed a motion to recall the remittitur. After careful consideration, the motion is denied. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court." (internal citations omitted)).



FOR THE COURT

FILED
Oct 25 2021

Columbia, South Carolina

cc:

Gregg E. Meyers, Esquire

Richard S. Dukes, Jr., Esquire

Benjamin C. Bruner, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

Chelsea Jaqueline Clark, Esquire

Julie J. Armstrong

The State of South Carolina
In The Court of Appeals

RECEIVED

Nov 08 2021

SC Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245 and
Father Doe 245, and John Doe 297,

Appellants

v.

The Bishop of Charleston, a Corporation Sole; Robert Gugliemone,
The Bishop Of Charleston, in his official capacity; Rev. Monsignor
Martin Laughlin, former Administrator of the Diocese of Charleston,
in his official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.,
David K. Haller, and Richter and Haller, LLC,

Respondents

Petition to Rehear



Appellants petition the Court of Appeals to rehear its order of October 25, 2021, denying the appellants' motion to recall the remittitur. The court failed to address two explicit matters related to the motion. Given that the Petition for Certiorari was timely submitted to the S.C. Supreme Court but the voluminous record was transmitted by an electronic means other than that preferred by the court, the Court of Appeals has failed to consider (1) whether the submitted Petition for Certiorari was properly submitted under (a) the court rules modified during the covid-

19 pandemic or (b) the permanent rule change made the week following the court's October 25 ruling, each of which dispensed with the traditional requirement to submit the Record on Appeal with the Petition, or (2) whether the death in counsel's immediate family constituted good cause to accept the petition as timely filed without the electronic Record.

There are, of course, compelling reasons to not recall the remittitur. If the remittitur is recalled the Court of Appeals risks the Supreme Court considering the merits of an appeal involving awkward facts, including (among others) a collusive class action, explicit judge-shopping, orders of the Supreme Court that were ignored, a fraud on the court with information withheld as to the fee award, and class counsel committing various misconduct in representing the class. The Court might strongly prefer to continue to avoid confronting any of those regrettable aspects of the record, as the Court of Appeals has succeeded in avoiding to date.

This Petition is submitted on the off-chance that the Court would concern itself with professional misconduct affecting hundreds of sexual abuse victims.

Conclusion

The motion to recall the remittitur should be reconsidered, and the remittitur recalled.

Respectfully submitted,



Gregg Meyers, S.C. Bar No. 9908

217 Lucas Street F-1
Mt. Pleasant SC 29464
843-324-1589
attygm@gmail.com

Attorney for Appellants

RECEIVED

Nov 08 2021

SC Court of Appeals

Certificate of Service

Pursuant to SCACR 240(c)(1), counsel certifies that a copy of this Petition has been served on opposing counsel for the parties by email sent to counsel of record simultaneously with the email submission to the Court of Appeals pursuant to Administrative Order 2020-05-29-02, the order applicable to proceedings during the covid-19 pandemic.

Also pursuant to that order, the \$50 filing fee for the Petition, established by SCACR 240(d) will be separately forwarded to the Court by United States mail.

Respectfully submitted,



Gregg Meyers, S.C. Bar No. 9908

217 Lucas Street F-1

Mt. Pleasant SC 29464

843-324-1589

attygm@gmail.com

Attorney for Appellants



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 30, 2021

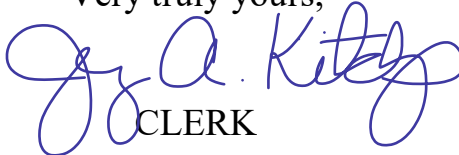
Mr. Gregg E. Meyers, Esquire
217 Lucas Street
Unit F1
Mt Pleasant SC 29464

Re: John Doe v. The Bishop of Charleston(2)
Appellate Case No. 2017-001996

Dear Counsel:

We are in receipt of your petition for rehearing filed on November 8, 2021. Please be advised that this Court will not consider a petition for rehearing from an order denying a motion to recall the remittitur pursuant to Rule 221(c) of the South Carolina Appellate Court Rules. Therefore, no further action will be taken on your petition for rehearing.

Very truly yours,


CLERK

cc: Richard S. Dukes, Jr., Esquire
Benjamin C. Bruner, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Chelsea Jaqueline Clark, Esquire



The Supreme Court of South Carolina

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe
245 and Father Doe 245, and John Doe 297, Petitioners,

v.

The Bishop of Charleston, A Corporation Sole; Robert
Gugliemone, The Bishop of Charleston, in his official
Capacity; Rev. Monsignor Martin Laughlin, former
Administrator of the Diocese of Charleston, in his official
Capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr.; David
K. Haller; and Richter and Haller, LLC, Respondents.

Appellate Case No. 2021-001525



ORDER

The South Carolina Court of Appeals sent the remittitur in this case on June 24, 2021, after Petitioner failed to serve and file a timely petition for a writ of certiorari with this Court. The sending of the remittitur ended appellate jurisdiction in this matter. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016); *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, this Court will take no action on the petition for a writ of certiorari filed on December 29, 2021, and the petition is stricken and dismissed.



FOR THE COURT C.J.

Columbia, South Carolina
January 11, 2022

cc:

Richard S. Dukes, Jr., Esquire

Gregg E. Meyers, Esquire

Susan Taylor Wall, Esquire

Henry Wilkins Frampton, IV, Esquire

Benjamin C. Bruner, Esquire

Chelsea Jaqueline Clark, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and
Jane Doe 2 and Rachel Roe, individually and as representatives of a class
of people similarly situated, Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald areAppellants,

v.

The Bishop of Charleston, a Corporation Sole; The Bishop of the Diocese of
Charleston, in his official capacity, Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC Intervenors.

PROOF OF SERVICE

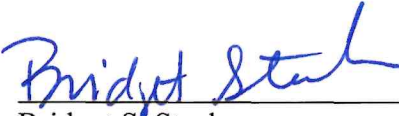
I, Bridge Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, counsel for
Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached
**DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER,
LLC'S MOTION TO DISMISS** by e-mail on April 3, 2024, addressed to the following:

Gregg E. Meyers, Esquire
attygm@gmail.com
114 4th Ave. NW
Byron, MN 55920
Attorney for Appellants

Richard S. Dukes, Esquire
RDukes@TurnerPadget.com
Carmelo Barone Sammataro
ssammataro@turnerpadget.com
Turner Padget Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29413-2129
Attorneys for Diocese Defendants

John E. Cuttino, Esquire (S.C. Bar # 1519)
jcuttino@gwblawfirm.com
P.O. Box 7368
Columbia, S.C. 29202
Attorneys for David K. Haller

April 3, 2024



Bridget S. Steele

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200 (29204)
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.
CHELSEA J. CLARK, P.A.

RECEIVED

Apr 03 2024

JAMES L. BRUNER (1950-2023)
SC Court of Appeals

J. COLE HANCOCK
J. WEBSTER HALL

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

April 3, 2024

VIA EMAIL ONLY

South Carolina Court of Appeals
Attn: Honorable A. Kitchings
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: John Doe #53 v. The Bishop of Charleston
Appellate Case No: 2023-000720
BPWM File No.: 3-716-134.012

Dear Ms. Kitchings:

Enclosed herewith for filing please find David K. Haller, Lawrence E. Richter, Jr. and Richter & Haller, LLC's Motion to Dismiss and Final Brief in the above referenced matter. I will mail a check to the Court tomorrow to cover the filing fee of \$50.00.

Sincerely,


Benjamin C. Bruner

BCB/bs
Encl.

cc: Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
Sam Sammataro, Esquire
John Cuttino, Esquire
Chelsea J. Clark, Esquire