THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332

CONSOLIDATED APPEALS

(Tracking number 2011185767)(1st Appeal)
(Tracking Number 2011203391) (3rd Appeal)
(Tracking Number 2011197671)(2nd Appeal)

Pee Dee Health Care, P.A. ..... Appellant,

v.

Estate of Hugh S. Thompson ..... Respondent.

RESPONDENT'S MOTION FOR APPELLATE COURT SANCTIONS

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INTRODUCTION

Rule 269 of the South Carolina Appellate Court Rules provides, in part, "Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days' notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." (emphasis added). Unfortunately, this is such a case. Accordingly, the Respondent Estate hereby moves this Court for sanctions in these consolidated[1] appeals. Respondent requests such sanctions be imposed upon Appellant Pee Dee Health Care ("PDHC") and Appellant's counsel as the Court deems appropriate.

Even when meritorious, litigation can be time-consuming and expensive. This litigation has been particularly time-consuming, tedious, and expensive; thus, this Court's prompt opinion of July 3, 2013 represented the most-welcomed possibility of finality for the Thompson family which has been defending the Estate from Appellant's claim for over three years.

This motion is based upon the nature of the appeals themselves – without merit and needless – and it is also based upon the pattern of abusive conduct in the course of these appeals. The sanctions sought here are purposefully limited for conduct in the appellate court.

In accordance with SCRCP 11(a), the undersigned certify that the nature of this motion precludes consultation from serving any useful purpose.

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[1] These three appeals were not initially consolidated but were consolidated for oral argument and the opinion that followed. The first appeal is tracking number 2011185767 (also referred to as the "probate appeal"). The second appeal is tracking number 2011197671 (also referred to as the "disqualification appeal"). The third appeal is tracking number 2011203391 (also referred to as the "summary judgment appeal").

I. These Appeals Were Both Without Merit and Unnecessary.

Of course, this Court's opinion of early July found all three appeals to be without merit but this motion will further address the lack of colorable virtue of each appeal. With regard to the lack of necessity, in this context, Respondent does not mean that the appeals were simply unnecessary because they were without merit – as explained in the arguments below, the first two appeals were unnecessary because the Appellant's interests were otherwise protected. Thus, the delay, complications, and costs added by the first two appeals are most offensive.

a. The Probate Court Appeal

i. Not needed -- Estate's Assets Were Protected Without Appeal.

As this Court is aware, this entire matter arises out of a probate claim asserted by the Appellant against the Respondent Estate for damages related to a Medicare credentialing oversight. Although the claim itself was removed to Circuit Court for disposition, the Appellant filed a motion in Probate Court seeking to block the Estate's payment of legal fees to counsel (which would have eviscerated the Estate's ability to defend itself[2]) and seeking to have the Respondent Estate purchase a commercial bond for Appellant's claims in an amount equal to the damages asserted by Appellant through counsel – even though the requested bond amount would have exceeded the actual value of the Estate itself.

In response to this excessive effort, the Respondent Estate offered to subject the Estate assets to Court oversight such that no disposal of those assets would occur without Probate Court

[2] This purpose of evisceration is demonstrated in Mr. Megna's letter of February 16, 2011 which not only predicts litigation "over the next few years as these and related matters are determined by the courts"; it confirms PDHC/Megna's belief and intent that the personal representatives of the Estate "remain restrained from exercising any powers of the office....." (Copy Attached as Exhibit A). Appellant's counsel Mr. Matthews made a similar prediction of "years" of litigation in a letter to the Estate's counsel dated June 24, 2010 (Copy Attached as Exhibit B). The misrepresentations found in Exhibit B are further discussed in Section I (c) (i) below.

approval; this proposal was accepted by the Probate Court.[3] Thus, the Probate Court order fully protected Appellant to the extent it could recover from the Respondent Estate – but Appellant appealed the Probate Court order anyway because it did not provide the potential (but unjustified) bounty of a bond in excess of the Estate value.

As noted above, the appeal also related to the Court's allowance for payment of attorney's fees from the proceeds of the sale of the decedent's house. As a result of the appeal (and the automatic stay), all estate funds from the sale of the house have remained in a court-protected account and Respondent's counsel have not been paid for their three years of successful efforts.

ii. Appeal Procedurally Flawed Despite Clear, Codified Requirements.

The appeal taken from the Probate Court to the Circuit Court was procedurally flawed and was dismissed by the trial court as such. This Court's July 3rd opinion likewise found that the Appellant failed to satisfy the statutory requirements of S.C. Code § 62-1-308(a) in two respects and these failures – particularly the failure to meet the 45 day deadline[4] – warranted the trial court dismissal. These procedural requirements were not new and were not hidden. They are clearly spelled out for any litigant and any attorney in the statute. Moreover, South Carolina case law relied upon by the Circuit Court has previously confirmed the dispositive nature of failing to satisfy the statutory requirements.[5]

Despite the clarity of the statute and despite the guidance provided by existing precedents, the first appeal was brought from the Circuit Court to this Court. Thus, this meritless

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[3] Respondent Estate made this offer to accommodate the Probate Court and in anticipation of a prompt resolution of the matter upon summary judgment. Unfortunately, the ultimate resolution has not been prompt.

[4] The other failure was the filing of the grounds of appeal in the wrong court.

[5] In Re Estate of Charles H. Cretzmeyer, 365 S. C. 12, 615 S. E. 2d 116 (2005); Gallagher vs. Evert, 353 S. C. 59, 577 S. E. 2d 217 (Ct. App. 2002); Witzig vs. Witzig, 325 S. C. 363, 479 S. E. 2d, 297 (Ct. App. 1996).

and unnecessary appeal of the probate court issue only served to drive up Respondent's legal fees as well as delay and complicate the ultimate disposition of these matters. The deterrence of such improper motives and effects are expressly addressed by SCACR 269.

iii. Adverse Facts Ignored/Denied In Appellate Process.

Not only did the Appellant fail to comply with the clear statutory requirements, the Appellant actually ignored the facts and argued to this Court (as it had in the trial court) that the appeal *was timely* and that the only issue related to the consequences of filing in the wrong place. The Initial Brief asserted several times (pages 8, 9, 10, and 11), that it was "without dispute" that the appeal had been filed on time. Only in the Reply Brief did Appellant argue for the first time that the consequences of an untimely appeal should not be dismissal. Reply Brief, pages 1-2.[6] This motion seeks to discourage such factual mischaracterizations in the future.

b. The Disqualification Appeal

i. Not needed -- Co-counsel Was Continuously Involved and Available.

Admittedly, there is case law from our appellate courts suggesting that the failure to immediately appeal an order of disqualification might waive the right to a party's counsel of choice; in that sense, the *interlocutory* appeal of this issue might be considered necessary. However, the availability and involvement of Appellant's co-counsel (Mr. Matthews) – an experienced litigator who did not and does not have the disqualifying history of being a fact witness to underlying matters – militates against the supposed necessity for the disqualified counsel, Mr. Megna, to remain involved. After all, it was co-counsel Matthews that signed the

[6] At oral argument, Appellant resurrected its claim to timeliness but for the first time suggested reliance upon the 5 day mailing rule found in SCRCP 6(e) – an argument not made in its briefs or in the trial court. R.pp 35-37 (record in the first appeal). This Court implicitly rejected this argument. At oral argument, Respondent suggested that the scope of the SCRCP was not so expansive as to modify codified deadlines.

initial complaint (R.p. 182)[7] – presumably in compliance with Rule 11 SCRCP requiring personal responsibility for that signature.[8] And when this mitigating factor is considered together with the lack of merit discussed below, the true manipulative and abusive purpose of this *interlocutory* appeal is revealed.

ii. Grounds For Disqualification Undeniable, Protests Disingenuous.

As important as the right to counsel of choice is, that right does not remove the ethical grounds for disqualification clearly present and repeatedly ignored in this case. Indeed, both the trial court (twice)[9] and this court (Opinion at 4) have itemized the areas in which Mr. Megna's undenied role as CEO of the Appellant renders him a necessary witness for relevant and needed factual inquiry. By ignoring this role, these facts, or the applicability of Rule 3.7, the Appellant and Mr. Megna do a disservice to themselves but more importantly do a disservice to the Courts, the profession, and the Respondent. This disservice warrants the sanctions sought herein.

The protests of Mr. Megna and the Appellant to his repeated disqualification (and the affirmation of that disqualification) also fail to ring true when the involvement of experienced co-counsel from the very beginning is noted. While Mr. Megna has recently suggested that Mr. Matthew's involvement was merely "ministerial"[10], the Respondent suggests that the

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[7] Unless otherwise noted, references to the Record on Appeal herein will be to the Record in the disqualification or second appeal (since that record is the most inclusive of materials cited herein).

[8] Rule 11 provides, in part, that:

> Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is an active member of the South Carolina Bar..... The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

[9] R.pp. 4-12 (original disqualification order) and R.pp.13-14 (denying reconsideration of disqualification).

[10] This description was used by Mr. Megna in response to a question from Judge Williams at oral argument seeking to confirm lawyer Matthews's involvement in the matter. When asked why Mr. Matthews didn't just sign the Rule

requirements of SCRCP 11 and SCACR 269 do not allow involvement of record counsel to be so limited.

Moreover, the records of counsel reflect that Mr. Megna's most visible involvement in the case (such as signing pleadings, discovery requests and responses, etc.) didn't begin until eight months after the case started and then only after the grounds for the Probate Court appeal were filed by Mr. Matthews. R.pp. 12-20, 24-32 (record in probate appeal). Prior to that time, counsel for the Respondent had corresponded with Mr. Megna and advised him, both in writing and by telephone, that he was probably a witness.[11] Initially, Mr. Megna acknowledged as much by reply email.[12] Mr. Megna thus knew that Respondent's counsel would challenge his serving as counsel, which they did within about seven weeks of his first official appearance in the case.[13]

c. The Summary Judgment Appeal

i. Appellant Knew It Had Already Litigated To Finality.

While not the only basis for the trial court's order of summary judgment, one basis for the decision was the preclusive effect of offensive collateral estoppel. Initially, Appellant's counsel failed to provide the actual administrative orders from the adverse Medicare adjudication

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59(e) Motion on Summary Judgment, Mr. Megna suggested that Mr. Matthews didn't really know anything about the case. Judge Williams, of course, brought up the fact that Mr. Matthews had signed the Complaint (in addition to other documents not raised by Judge Williams). Notably, immediately after oral argument, it was Mr. Matthews who was knowledgeable enough to file the bizarre post-argument Motion to Vacate. Mr. Matthews also wrote this Court in response to the Respondent's Reply to that post-argument motion.

[11] As noted elsewhere in this motion, the concern with Mr. Megna's potential dual role as witness and counsel has been raised early and often. On April 13, 2010, Respondent's counsel e-mailed Mr. Megna as follows: "Are you counsel of record for PDHC? If not, who is? I suspect that if the matter is controverted, it will be necessary for you to be a witness." (Copy Attached as Exhibit C).

[12] In reply to the concern as raised by Respondent's counsel (see footnote 11 above), Mr. Megna replied that same day, "If the PR decides to dispute the claim, & I am a witness, we will go from there." (Copy Attached as Exhibit D –additional e-mail dialogue with an orgulous Mr. Megna from May 21, 2010 is also included).

[13] The Estate filed its motion to disqualify Mr. Megna in the trial court on January 31, 2011 (R.p.717) which followed Megna's execution of a Motion for Summary Judgment filed in the case on December 9, 2010. (R.p.196).

which served as the basis for this estoppel; instead, Mr. Matthews chose to completely misrepresent those orders while he attempted to negotiate for PDHC.[14] Later, after discovery requests were directed to the administrative officials themselves, the Estate obtained the records of the federal administrative law judge and the Medicare Appeals Counsel. These records confirmed that the Appellant, through Mr. Megna, had already litigated the fault issue of Dr. Thompson's credentialing error and lost.

The federal judge and administrative appellate body found that Appellant was at fault as the employer with its own non-delegable duty to confirm employee credentials *before* accepting Medicare payments for the employee's services. That finding of fault became final when Appellant did not pursue further appeals and that finding served as the basis for Medicare's recoupment of funds paid to Appellant.

Appellant knew the issue of fault had been litigated to finality in the federal forum before it sought to shift that fault to the unsuspecting Estate of the muted[15] *decedent.* Accordingly, Appellant and its counsel knew before even signing and filing the complaint that the federal

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[14] Discovery requests seeking these records were acknowledged by Mr. Matthews in a letter dated June 24, 2010 (Copy Attached as Exhibit B). Without providing the records, Mr. Matthew's letter misrepresented the administrative holding– and based upon these misrepresentations, the letter proposed settlement discussions.

Mr. Matthews wrote that "All administrative decisions were determined adversely to Dr. Thompson....." Notably, Dr. Thompson was not even a party to those proceedings. Mr. Matthews further claimed that Medicare had "imputed the false statement made by Dr. Thompson to PDHC...." While there obviously was a credentialing oversight, there was no federal finding of a "false statement". Moreover, the liability of PDHC was direct, not imputed, and was based upon the fault of PDHC in failing to meet its non-delegable credentialing oversight duties. Contrary to the representation in Matthew's letter, Medicare did not state that Dr. Thompson "should have informed PDHC of his disbarment from Medicare." Rather, the federal judge held that PDHC should have investigated and found the disbarment itself. After falsely representing the federal adjudication (not yet known to Respondents), Mr. Matthews goes on to describe the decedent's conduct as "intentionally deceptive" and a "betrayal of [PDHC] trust" from a "friend and colleague of many years" employed by PDHC at a time "when no others would" employ decedent.

[15] As Judge Baxley noted in his Order of Summary Judgment, Finding of Fact 7: "Eighteen months after the final decision of the Medicare Appeals Council, and after the death of Defendant Dr. Thompson, *who would have been a pivotal witness as to what representations passed between the parties* as to Dr. Thompson's Medicare provider eligibility, this claim was brought in the Probate Court." R.p. 22 (emphasis added).

holdings could be used against them through the doctrine of non-mutual collateral estoppel. *Appellant and its counsel knew fault had been determined but they brought their inconsistent claim anyway and hoped a fee-frozen Estate could not defend itself and/or would settle based upon a misrepresented Medicare record.*

ii. Counsel's Authorization Was Questioned Even Before This Appeal.

As much as the Appellant's hyperbolic pleadings, even in this Court, feign some shock or surprise that the trial court actually did what it said it was going to do – both disqualify Mr. Megna and consider summary judgment after allowing him to argue the issue -- it was not a surprise that counsel's authorization to file subsequent pleadings would be questioned and disallowed.

Both the trial court[16] and Respondent[17] had raised the issue of such authority in advance of the due date for the motion for reconsideration of summary judgment. In addition, the trial court's original disqualification order had been clear.[18] Thus, both attorneys of record for

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[16] Specifically, in reaffirming the disqualification, the court dismissed other activity by disqualified counsel as unauthorized – "The Court granted Plaintiff's counsel [Megna] a limited appearance only. Therefore, all motions, subpoenas, and filings signed only by disqualified counsel, Tony R. Megna ... are hereby QUASHED. " R. p. 13 (August 12, 2011 Order at page 1). The order was sent by the Court to Mr. Matthews as "Plaintiff's remaining counsel" with instructions for Matthews to serve the order upon all parties. The trial court's summary judgment letter of the same date was also sent to attorney Matthews alone as counsel for PDHC. R.pp. 584-585.

[17] Counsel for the Estate first raised concerns regarding Mr. Megna's authority to continue participation in a letter to the trial court on May 20, 2011. This letter was attached as Exhibit B to the Estate's Return to the Petition for Rehearing filed with this Court. The Estate also raised the issue specifically in its 6 page Response to Motion for Reconsideration of Summary Judgment (This response was filed as Exhibit A to the affidavit of Estate's counsel submitted in August 2013 to this Court) filed in the trial court on September 20, 2011. Even before the September 20, 2011 trial court response raising this issue of counsel's authorization, it was raised in a counter-motion submitted in this Court on September 6, 2011 (see pages 4-6 of that counter-motion).

[18] That Order had provided:

> The Court orders complete disqualification effective with the execution of this order. The Court concludes that it is not feasible for Mr. Megna to remain involved as counsel of record even before trial. The potential for problems would exist even with depositions and other pre-trial functions. The immediate availability of Mr. Megna's partner eliminates any hardship or difficulty associated with this effective date.

Appellant in the trial court (Mr. Matthews and Mr. Megna) *knew* that Mr. Matthews needed to execute any needed pleadings.

As this Court's July 3, 2013 Opinion provided, "Accordingly, the circuit court provided clear and unequivocal notice to PDHC that Mr. Megna was only allowed to orally argue the motions for summary judgment and was disqualified from all other appearances and activities following his disqualification." Opinion at p. 2. Mr. Matthews could have executed any motion to reconsider – or proceeded to execute a notice of appeal to this Court since the motion to reconsider was probably not needed. Of course, any appeal of the summary judgment issue – even by Mr. Matthews – would still lack substantive merit; but when Mr. Megna executed the motion for reconsideration, it rendered the summary judgment appeal procedurally frivolous as untimely, not just substantively without merit. Appellant is a victim of its own officer's failing to heed multiple warnings.

Even since the Court's July opinion, Appellant's new counsel denied the documented history of concern. [19] Perhaps new counsel relied upon erroneous information from Mr. Megna, Mr. Matthews, or others, but new counsel's representation was clearly not a true reflection of the record.

R. p. 12 (Disqualification of Counsel Order, dated April 15, 2011, page 9 (incorporating footnote 11)). Of course, the trial court's written order reinforced the directive given even earlier by the Court directly to counsel in the Courtroom on March 16, 2011, "It begins now." R. p. 427 (Transcript at Page 38, lines 5-6 (emphasis added)).

[19] Reply in Support of Petition for Rehearing, page 3. In this Reply, Appellant's new counsel falsely states, "Respondent did not challenge Mr. Megna's filing of the motion for reconsideration on summary judgment in the trial court..." In response, Respondent's counsel filed an affidavit in August 2013 with this Court attaching a copy of the 6 page Response To Motion For Reconsideration of Summary Judgment (EXHIBIT A to the Affidavit)(without attachments to reduce size), filed by Respondents in the trial court on September 20, 2011.

II. Counsel's Appellate Court Conduct Continued An Abusive Pattern.

Unfortunately, the conduct of Appellant's counsel in this Court continued a bizarre pattern established in the trial – a pattern of court of mixing unwarranted threats/warnings[20] with a simulated courtesy.[21] In addition, Appellant's counsel has continually attempted to direct all courts away from the actual merit of issues at bar and toward some suggested red herring.

a. Examples from This Court.

To illustrate its point, the Respondent will identify some specific examples of such conduct seen in this appellate court.

i. Repeated, Groundless Litigation Threats Directed Toward Counsel.

Immediately before the summary judgment motion was considered, Mr. Megna raised a facially legitimate concern regarding Turner Padget Graham & Laney P.A.'s conflicting representation of Appellant (albeit in name only), through a fully liable worker's compensation insurer -- fully responsible for claim defense. This conflicting representation was in a previously settled, dormant matter that was believed to be concluded. The issue was reasonably raised and

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[20] Perhaps the most bizarre example is found in Mr. Megna's response to the trial court motion to disqualify him as a witness. While professing to be "astounded" by Mr. James' participation in a "dishonorable" and "inappropriate and demeaning litigation strategy", Mr. Megna accuses both Josey and James of "false and unprincipled personal accusations." R.pp. 217-220.

Because a document obtained from a Florence County case was used in the motion to disqualify to confirm Mr. Megna's role as CEO of PDHC, Mr. Megna's motion response vents his concerns with that Florence litigation (not involving Josey and James) and the *ex parte* restraining order obtained in that Florence county case. Mr. Megna's response suggests an elaborate conspiracy involving the family of a circuit judge and several law firms. Mr. Megna further advises, "Additional litigation against those involved in the events leading up to and including the obtaining of the fraudulently obtained *ex parte* order is forthcoming." R.p. 219. These accusations were followed by Mr. Megna's e-mail of July 26, 2011 advising "you and Jay are likely witnesses, if not possible Defendants... for multiple reasons including but not limited to aiding and abetting and breach of fiduciary duties to an existing client." R. pp. 554-555.

[21] For example, in an e-mail of November 1, 2012, addressing on-going record on appeal issues, Mr. Megna tells Mr. James, "I sincerely appreciate your efforts and goodwill in completing this matter." (The reference to Mr. James' efforts is not clear as Mr. James did not complete the record as it was not Respondent's responsibility). In the same e-mail, Mr. Megna also advises Mr. James, "Do not confuse our cooperation with the objections to your assistance to Turner Padget in the continuing violation of Rule 1.7, etc." Likewise, in an e-mail of January 17, 2013, Mr. Megna thanks Mr. James for his always helpful communications but still notes his objection to "obvious" ethical violations. These e-mails are part of Exhibit E attached hereto.

investigated without the filing or making of a motion to disqualify – but when the adverse ruling on summary judgment was rendered and the superficial conflict resolved (to the satisfaction of the trial court, the Workers' Compensation Commissioner, and the Office of Disciplinary Counsel), Appellant nonetheless exaggerated the appearance of this corrected and completely harmless conflict to ask this Court vacate everything adverse done in the trial court. Moreover, Appellant has repeatedly implied threats regarding this resolved conflict in an apparent attempt to gain litigation advantage.

The Respondent can point to numerous communications related to appellate practice in this court where Mr. Megna continued to assert an ongoing ethical violation and related harm: these include his letter of May 3, 2012, e-mail of April 5, 2012, e-mail of November 1, 2012, e-mail of November 3, 2012, and e-mail of January 17, 2013. (All attached hereto as Exhibit E). Typical is the April 5th e-mail in which Mr. Megna advises Josey and James, "The Plaintiff/Appellant .... Request that you and your law firms take immediate action to discontinue your adverse representation ... and mitigate the continuing damages.....that respect your legal and ethical duties of loyalty and fealty ...."

The Appellant's Briefs even continued to raise the alleged conflict even after this Court refused to act on the related motion filed by Appellant. See, e.g., Appellant's Brief (disqualification appeal), pp. 4-7. Even at the oral argument before this court, Mr. Megna opined about his pride in the legal profession and corresponding dismay with the Court's continued failure to protect the system's integrity threatened by this harmless matter; when pressed for specific supporting authority and issue preservation, however, details were not forthcoming.

It is regrettable that this conflict issue provided Appellant and its counsel with even a brief moment's fodder for their litigation tactics, but the tactics had begun in the trial court long

before the dormant harmless conflict came to light. For example, as soon as local counsel for the Respondents, Mr. James, associated co-counsel Mr. Josey for litigation assistance, Mr. Megna began a push back effort seeking to inhibit this avenue of support. Initially, Mr. Megna suggested that something in Mr. Josey's former federal service disqualified him from working on this Medicare-related case; when challenged for specifics, however, they never materialized.[22]

In another example, Mr. Megna prepared a motion to strike the Defendant's Answer in the trial court (never filed) which was presented to Respondent's counsel with reference to a law review article purporting to support the liability of counsel for "aiding and abetting" a client for wrongfully denying an estate claim.[23] Another example, noted in footnote 20 above, is Mr. Megna's suggestion that counsel might somehow be facing additional litigation along with those alleged to be in a conspiracy enveloping the family of a circuit judge, and several law firms. R.pp. 217-220.

ii. Repeated Failure to Timely Prepare Proper Record

As Appellant in all three appeals, the burden fell on PDHC and its counsel to prepare the Record on Appeal needed for each appeal. As this Court knows, the rules provide that the Record on Appeal shall include information presented to the trial court and designated as necessary and relevant by each of the respective parties. Ideally, the Record on Appeal includes *all* the material referenced by each party in their briefs *and nothing else*.

The Record on Appeal in the first appeal was prepared without incident. The problems began with the second appeal. The record prepared by Appellant's counsel initially left out material designated by Respondent while at the same time including materials not cited by any party in their Briefs, and not relevant to the appeals. Working through these errors – to secure a

[22] These communications are attached hereto as Exhibit F.

[23] This presented motion is attached hereto as Exhibit G.

supplemental record for omitted designations – and to read through and identify unreferenced material – significantly increased the burden on Respondent's counsel and the Respondent's corresponding attorney fees in this Court. Most likely it inconvenienced the Court's review as well. The following are the specifics.

1. **Leaving Material Out.**

In the second (disqualification) appeal, the Respondent's Initial Brief and Designation were timely filed and served on April 11, 2012 -- triggering a May 11th due date for the Record on Appeal pursuant to Rule 210(a) of the SCACR. The Appellant, however, failed to file and serve a Record on Appeal in this particular appeal by May 11th. Thus, Respondent was unable to prepare and file its final brief.

Appellant had filed a Motion to Consolidate the record in the second appeal with the record in the third appeal on March 16, 2012. Before the Court ruled on that motion, however, Appellant filed (April 13, 2012) the Record on Appeal with respect to the third appeal (Tracking Number 2011203391). While Respondent did not oppose the concept of a consolidated record if approved by the Court, the record filed April 13th could not alone serve as a consolidated record for both appeals because it did not include materials designated by Respondent in its Designation of Matter for the second/disqualification appeal (timely filed and served on April 11, 2012). Respondent still consented to a consolidated record, however, if the April 13th record were supplemented as needed to include all designated materials.

Despite the lack of approval for a consolidated record, Appellant filed its final brief in the second appeal on May 3, 2012 without the filing of a corresponding record for that appeal. In his cover letter to counsel for the final brief in the second appeal (letter previously submitted as Exhibit A to Respondent's Motion to Dismiss for Noncompliance with SCACR 210), counsel

for Respondent suggested that the April 13th record was a consolidated record – although this Court had not authorized a consolidated record and although the April 13th record was missing materials designated by Respondent on April 11th.[24]

On May 10, 2012 -- one day before the due date for the disqualification appeal record, knowing that no consolidated record had been authorized or prepared, Appellant filed its Motion to Extend the time for filing the record in the second appeal.[25] The Estate consented to the motion to extend "[s]o long as the dispositive appeal (2011203391) is not delayed in any way, Respondent does not object to an extension for the preparation of the Record on Appeal in the present matter (2011197671) or even a stay of this matter." An extension was granted by order of Acting Judge Cureton dated September 25, 2012 which allowed Appellant twenty days to file and serve the Record on Appeal in this matter (triggering a new due date of October 15, 2012).[26]

A purported Record on Appeal (2 bound volumes) for the second (disqualification) appeal was finally filed and served on October 12, 2012 and received by counsel within days. Unfortunately, however, even this much awaited Record on Appeal did not comply with SCACR 210 in that it still failed to include all the material designated by the Respondent pursuant to Rule

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[24] Appellant's Final Brief in the second (disqualification) appeal apparently incorporated record citations to the bound and filed record for the third (summary judgment) appeal. This was possible for Appellant (but only Appellant) because the summary judgment record was made to include everything Appellant designated in both of the last two appeals.

[25] Appellant's Motion to Extend suggests Appellant never received Respondent's designation filed and served on April 11th; however, Appellant never wrote the Respondent and never filed anything with the Court addressing this alleged non-receipt. When staff of Appellant's counsel called on May 10th suggesting this same alleged non-receipt, Respondent's counsel emailed, faxed, and re-mailed the previously filed and served material that same day. For an earlier and more thorough description of the Appellant's alleged non-receipt of the designation and Respondent's response, see footnote 2 of Respondent's response to the motion to extend.

[26] In the interim time before an extension was granted and no progress was being made to finalize the Record on Appeal, the Respondent Estate filed a Motion to Dismiss the Appeal for failure to prosecute. That motion was denied.

209 SCACR.[27] Of course, the failure to include all the material designated by the Estate pursuant to Rule 209 (and referenced in the Estate Brief) rendered preparation of a final brief impossible.[28]

As the Respondent Estate explained in its subsequent Motion to Dismiss the Appeal for non-compliance with SCACR 210, "Respondent has no objection to the submission of these omitted materials in the form of a supplemental record prepared by Appellant at Appellant's expense – but the delay caused by this error is simply the latest iteration of a compendium of errors exponentially raising the cost of litigation to the parties and the Court." Ultimately a third, supplemental volume was prepared for the Record on Appeal but not until the entire process had been further delayed at great costs to the Respondent Estate. This delay, whether intended or careless, is also well within the corrective scope of SCACR 269 sanctions.

2. Putting Too Much Material In.

The lengthy, multi-volume materials submitted by the Appellant in the latter two appeals illustrate this problem. Although Respondent was willing to consent to some consolidated record if sufficiently inclusive and approved by the Court, the Appellant failed to secure the appropriate court approval. As an apparent result, much of the record is duplicated in the different appeals although much of it is not relevant to the separate appeal in which it was duplicated. *Moreover, hundreds of pages not needed or relevant to any of the appeals were included in both of the latter two appeal records.*

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[27] There were other areas of non-compliance as well -- such as the inclusion of duplicates, the failure to follow the presentation order outlined in SCACR 210(c), and the inclusion of unreferenced material. For example, the Appellant's Return to the Disqualification Motion is included twice (both times without attachments), once beginning at page 200 and another beginning at page 730. In addition, the Record on Appeal filed October 12, 2012 includes Diplomas and Certifications of Dr. Hugh Thompson beginning on page 590 that are not referenced in Appellant's Brief and represent undisputed evidence not relevant to any of the issues in the case.

[28] This was not a case of the Respondent deciding that it wanted to supplement the record under Rule 212 with something not previously designated; this was a case of the Appellant simply failing to include everything listed by the Respondent's in its designation.

The Record on Appeal in the disqualification matter is 923 pages spread over 3 volumes. Of these 923 pages, Appellant cites less than 267 pages (267 is the count assuming all citations are to separate and distinct pages without repeats – thus, even though the first two citations are to the same 40 pages, they were counted conservatively as 80 separate pages). Respondent's brief in the same matter cites no more than 95 pages of the record (again assuming no duplicates). The combined total (again assuming no duplicates) of 362 represents slightly over 39% of the total record.

To further illustrate, the Record on Appeal in the disqualification matter included hundreds of pages not relevant to that matter such as: trial court pleadings related to the summary judgment issue (pp. 18, 35, 196, 249, 279, 289, 349), communications related to the worker's compensation matter raised as a conflict (pp. 545, 548, 550, 552, 581), materials relating to disallowed third-party subpoenas (pp. 304, 311, 554, 557), and appellate court pleadings on file with this Court already (pp. 356, 365, 370, 375).

The Record on Appeal for the summary judgment matter is 715 pages long spread over 2 volumes – and there are less than 177 pages cited by Appellants (177 is the number assuming all citations are to different pages) in their primary Brief. Respondent's Brief in that same matter cites to 102 pages of the record or less (again, 102 assumes every citation is to a new and different page). Adding the combined maximum number of pages actually cited, the total of 279 is only 39% of the entire record.

To further illustrate, the Record on Appeal in the summary judgment matter included hundreds of pages not relevant to that matter such as: trial court pleadings related to the disqualification issue (pp. 4, 13, 200, 329), communications related to the worker's compensation matter raised as a conflict (pp. 545, 548, 550, 552, 581), materials relating to

disallowed third-party subpoenas (pp. 304, 311, 554, 557), and appellate court pleadings on file with this Court already (pp. 37, 349, 356, 365, 370, 375, 586).

In State v. Harris, 278 S.C. 46, 292 S.E.2d 40 (1982), the Court admonished lawyers for inclusion of over 70% irrelevant material although actual sanctions were reserved. Here, the excessive pages made the work of preparing final briefs for Respondent far more time consuming because of the need to sift through poorly indexed, unnecessary pages to make the proper record citations.

3. Misrepresenting Record Consolidation and Completeness.

As noted above, in his May 3, 2012 cover letter (to counsel, but notably not to the Court) for the final brief in the second (disqualification) appeal,[29] Mr. Megna suggested that the April 13th record was a consolidated record – although this Court had not authorized a consolidated record and although the April 13th record was missing materials designated by Respondent. This misrepresentation triggered an immediate concern with the Estate's counsel that the Estate's final brief in the summary judgment matter might subsequently be suggested untimely (because it still could not be completed based upon the lack of a full record for that appeal). Because of this concern, Respondent immediately reached out to the Clerk of this Court seeking guidance and Appellant subsequently filed its last day request for an extension to finalize the summary judgment record. Through this motion for sanctions, Respondent Estate seeks to address this needless, time-consuming, and expensive run-around.

iii. Seeking To Use This Court To Manipulate Trial Court Jurisdiction.

Appellant has repeatedly sought to have this Court vacate or revoke adverse rulings, painstakingly considered by the trial court, under the guise of jurisdictional or stay issues. This

[29] This letter was previously submitted as Exhibit A to Respondent's Motion to Dismiss for Noncompliance with SCACR 210.

manipulation began when Appellant filed an opportunistic notice of appeal from the August 2011 ruling denying reconsideration of Mr. Megna's disqualification. Despite receiving simultaneous notice of the trial court's indication that it would sign a formal order granting the Respondent summary judgment, the Appellant chose not to pursue appeals of these issues simultaneously but instead sought to use an immediate appeal on the disqualification issue to argue that this Court deprived the trial court of authority to finalize its previously announced (and explained) decision of summary judgment. This strategic effort to piece-meal the appellate court's review of matters has wasted the resources of this Court and has cost the Respondent in time and fees.

b. Pattern of Conduct Recognized And Sanctioned In The Trial Court

The unfortunate litigation conduct and strategies of Mr. Matthews and Mr. Megna have already been rebuked by the trial courts of this State – both in this matter and other matters. In this matter, the interlocutory appeals of probate issues and disqualification issues led Respondent to delay the pursuit of trial court sanctions until the matter was again consolidated and finalized.

In the meantime, however, third parties subjected to unauthorized discovery attempts from the disqualified Mr. Megna have filed motions for sanctions and those motions have been granted. The trial court has even proposed to jail Mr. Megna for criminal contempt and plans a specific Rule to Show Cause hearing on that subject. (Judge Baxley's Contempt Order of February 2013 attached hereto as Exhibit H). The trial court's order of civil contempt has been appealed by Mr. Megna. (Tracking No. 2013001461).

In an unrelated matter, but illustrative of similar conduct, Mr. Megna has been recognized by the Circuit Court in Richland County for demonstrating a lack of candor with the Court. Because Mr. Megna is a witness in the matter at bar, Estate counsel sought to monitor the

proceedings of Richland County litigation where court findings might be relevant to Mr. Megna's credibility. See Anasti v. Wilson, unpublished opinion 2011-UP-187 of this Court (filed April 28, 2011) (dismissing appeal from trial court order which found Mr. Megna "was not credible as to any contested issue").

III. Counsel's Abusive and Meritless Appellate Practice Has Harmed Respondent.

a. Driven Up Costs Exponentially

Years ago, early in this litigation, both Mr. Megna (Exhibit A hereto) and Mr. Matthews (Exhibit B hereto) wrote to Respondent's counsel and predicted that they would tie up the Respondent Estate for years -- that threat has proven true. As the supporting records of Respondent's counsel will demonstrate, the Respondent's legal fees and costs have proven astronomical. By their signatures below, Counsel represents that detailed time records demonstrate that over 295 hours of counsel's time have been spent on appeal-related work in this matter and the Respondent Estate has been or will be billed $79,380 for that appeal-related time.[30]

There is no applicable fee-shifting provision in the Rules or Probate Code; however, the Respondent does think consideration of its fees is relevant and indicative of the abusive strategies and tactics employed in this matter.[31] The fees billed to Respondent do not even include the tens of thousands of dollars spent by counsel in response to the ODC complaint filed

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[30] These records have not been submitted simultaneously herewith because of privacy and privilege concerns and because of Appellant's use of such records obtained in other matters. Counsel is prepared to submit such records, however, pursuant to such protective terms, if any, and conditions this Court would like to direct. Although some time entries are related to both trial and appellate tasks, counsel believes these totals to be underinclusive in that anything not clear was ommitted and all ODC-related time was not included.

[31] The Respondent would rely on the South Carolina Frivolous Civil Proceedings Act, which applies to any pleading filed in a civil action, S.C. Code § 15-36-10(A)(1), or any frivolous "document", § 15-36-10(A)(4)(b). The Act further provides that it does not alter the South Carolina Appellate Court Rules (such as SCACR 269). Id. at § 15-36-10(G) (1). Of course, Respondent's reliance on the statute is completely consistent with SCACR 269 anyway. The Act further provides that "reasonable costs and attorney's fees of the prevailing party" may be used as one measure of appropriate sanctions in a case. Id. at § 15-36-10(G) (1).

by PDHC staff subordinate to Mr. Megna (specifically, Mark Matthews, brother of PDHC counsel Ben Matthews); those complaints were promptly dismissed.

b. Delayed Closure of The Estate And Tied Up Assets Thereby.

But for this meritless litigation and the years of multi-staged appeals therefrom, the Respondent Estate could have been settled and its remaining assets distributed to Dr. Thompson's heirs – and used for any number of time sensitive opportunities – including the education of a granddaughter who began her college studies a year ago. In addition, because of restrictions on the Estate, Respondent's counsel have represented this Estate without immediate compensation.

c. Subjected Decedent's Survivors To A Needless Emotional Yo-Yo

As Mr. Megna referenced in his oral arguments, the decedent Dr. Thompson died from a brain tumor – while this fact is not relevant to the merits of the matter, it is part of the background behind the delay asserting the underlying claim. This claim was not asserted while Dr. Thompson was alive and available to explain or comment upon his interaction with his sophisticated clinical employer; rather, it was delayed until he was not available. Perhaps this delay was out of empathy for his illness as Mr. Megna has occasionally suggested in Court, but perhaps it was to take advantage of the Estate's inability to directly contradict alleged conduct or representations by PDHC. Regardless of the reason for the delay, it has imposed a burden on the Thompson children that was not necessary given the futility of the claim after Medicare's finding of employer fault.

In addition, the Appellant's insistence upon appealing everything separately, rehearing everything, and seeking to vacate everything, has meant that the family has had to endure every procedural hoop and deadline on their way to desired finality. Moreover, they have repeatedly

heard their father referenced in oral arguments and Briefs as alternately a fraudster or a sympathetic dying colleague.[32] These inconsistent approaches only served to magnify their frustration with the legal system and increase their cynical view of our profession.

CONCLUSION

Abusive practices like those pursued by the Appellant and its lawyers in this Court are not only harmful to the other litigants in this case and the disposition of justice in this case – but to the public trust in the entire judicial system and the rule of law. Only sanctions will address these abuses and deter others inclined to employ such tactics. Only sanctions can help restore the Respondent to an equitable position and only sanctions can restore the erosion of trust brought about in this case. Respectfully submitted,

September 6, 2013

John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
843-393-6089 (Fax)
pjlaw507@bellsouth.net (Email)

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

[32] By way of example from this Court, the Appellant's Brief (disqualification appeal), p. 11, suggest that this litigation was delayed because of the terminal brain cancer of the estate's decedent – out of respect – a suggestion repeated by Mr. Megna at oral argument. Nevertheless, the same Brief (and voluminous other pleadings and documents) claims the decedent affirmatively provided Appellant with false information, pp. 19-21, which has not been established; actually, the surviving documentary evidence suggest simple oversight by the decedent with regard to his credentialing – an oversight not discovered because of Appellant's failure to satisfy its non-delegable codified duty of reviewing employee credentials prior to submitting a Medicare benefit reassignment. See also Exhibit B hereto (Mr. Matthews' letter – although not at the appellate stage).

EXHIBIT A

Matthews and Megna, LLC
Attorneys and Counselors at Law
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: tmegna@gmail.com

February 16, 2011

Jay [illegible], Esquire
PO Box 507
Darlington, SC 29540

Re: Estate of Hugh S. Thompson, Case No:
Notice of Appeal – 2010-CP-16-633

Gentlemen:

Please find enclosed the Notice of Appeal of PDHC from the order of the Honorable J. Michael Baxley dated January 18, 2011. During the pendency of this particular appeal, we recognize the personal representatives remain restrained from exercising any powers of their office except as necessary to preserve the estate or to pay the person or creditor demanding bond. We remain amenable to considering any matter that may arise over the next few years as these and the related matters are determined by the courts.

Sincerely yours,

Tony R. Megna

Cc: Renee Josey
1831 W. Evans Street
Florence, SC 29501

The Honorable Scott B. Suggs
Clerk Of Court, Darlington County
1 Public Square, Room B-4
Darlington, South Carolina 29532

EXHIBIT
B

Jay James

From: "Benjamin R. Matthews" <ben@pdhc.com>
To: "pjlaw507" <pjlaw507@bellsouth.net>
Cc: <tmegna@gmail.com>
Sent: Friday, June 25, 2010 9:34 PM
Attach: request for transfer of jurisdiction.pdf; Jay letter 062210.pdf
Subject: PDHC v Estate of Thompson

Jay,

Please find enclosed information relating to the above matter. It is self-explanatory and an opportunity for resolution. Please contact Tony at tmegna@gmail.com or call him so we can get together if you decide to go forward.

Thanks, Ben

Please send all written correspondence to:

Benjamin R. Matthews, Esquire
3400 West Avenue
Columbia, SC 29203
ben@pdhc.com
Office telephone: 803.799.1700

Matthews and Megan, LLC
Attorneys and Counselors at Law

3400 West Avenue
Columbia, Sc 29203
TELEPHONE: 803-799-1700

June 24, 2010

Jay James, Esquire
112 Casual Street
Darlington, SC 29540

Re: Estate of Hugh S. Thompson, Case No.: 2009-ES-16-424
Civil Action No: 10-CP-16-0332

Dear Jay:

I am in receipt of your answer and discovery requests as well as your denial of the amended claim of Pee Dee Health Care, PA. I received the documents on June 22, 2010 although your letter was dated June 17, 2010.

For informational purposes, PDHC did, in fact, appeal the claim through the Medicare administrative appeals process. All administrative decisions were determined adversely to Dr. Thompson, including many of the limitations periods and many of the other issues raised in your answer. The administrative appeals process held the limitations periods do not apply in cases where a provider has been disbarred from the Medicare program by the OIG, is not reinstated by the OIG, and/or false statements were made on the provider application. They imputed the false statement made by Dr. Thompson to PDHC as he was an employee of PDHC, and his work was billed under his personal provider number and the PDHC group billing number. They stated that PDHC was liable for repayment because Dr. Thompson, as an employee of PDHC, should have informed PDHC of his disbarment from Medicare. Tony and I are of the opinion that the legal work performed on behalf of PDHC in pursuing the Medicare administrative appeals is protected under the attorney-client privilege and the work product doctrine, which protects an attorney's thoughts, mental impressions, documents and other tangible and intangible items prepared in anticipation of litigation, even where litigation is not imminent, as long as the primary motivating purpose behind the creation of the documents is to aid in possible future litigation. Obviously, due to the circumstances, the litigation with Dr. Thompson was likely, foreseeable and, unfortunately, inevitable. PDHC is willing, however, to consider providing you the decision of the QIC [Medicare Qualified Independent Contractor] with the caveat that you obtain an order of the Court [Probate and Common Pleas since you have objected to the jurisdiction of the Circuit Court] in which your client agrees that the disclosure of any documents or information in regard to the administrative appeals does not waive any claims of privilege, however defined, that can or may be asserted by PDHC or Tony.

Tony as well as Drs. Cohen or Matthews had hoped the matter would not get to this point as none of them wish to tarnish Hubie's memory. Hubble was a friend and colleague of many years who they employed when no others would, and who they trusted implicitly. It is sad and unfortunate that the trust they reposed in Hubble was breached – and in such a horribly reckless manner by Hubie. We all know that the kindest portrayal of Hubie conduct was reckless and intentionally deceptive. Joe, Alex and Tony are not willing to forego the substantial damages PDHC has sustained. But, on my suggestion (which was, at best, an uneasy conversation), they will consider allowing you to informally discuss the matter, if you desire, with those in the organization who know what occurred when Hubie came to work for PDHC. Tony and I will have to be present. This is not negotiable. They will only consider making such an offer after the estate responds to PDHC's discovery requests. The reasoning is simple. They expect the same transparency from the estate that they are willing to provide, i.e., who knew what, when, whether or not there are similar claims pending against the estate, what documents, if any, the estate has in its or its agent possession, when the documents were obtained, the information known by the heirs as to the matter, and when, etc.

Considering that PDHC took every possible action to mitigate its damages, your admission in paragraph 12 that federal law provides for a continuation of the suspension of Hubie's Medicare privileges until they were reinstated by the OIG in 2002, your admission that Hubie had a duty to be truthful on his Medicare application and to PDHC [paragraph 30 and 34 of your answer --- which obviously did not occur], and the other admissions made in the answer, it appears the only real issue in the case is the considerable damages that PDHC has sustained.

Under the circumstances, I suggest that you reconsider your approach to the litigation and talk to Tony. If you do not, matters will most likely, and unfortunately, become more difficult. At my request, he has indicated he may be willing to limit PDHC's allow the Court or an independent party to consider the damage issue alone if the estate admits liability and we agree to a suitable framework that protects everyone to some degree. I have been involved in the past in cases where a 'high' and a 'low' damage number are predetermined by the parties, and the case submitted on the issue of damages alone. If the damages awarded amount to less than the 'low' end of the agreement, the Plaintiff receives the agreed upon 'low' number. If the damages awarded exceed the 'high' number, the Plaintiff is limited to the amount of the predetermined maximum damage award. Parties are provided limited protection to limit their risk, litigation costs are minimized, and the matter is brought to finality without the attendant publicity and difficulties associated with full-blown litigation. Part of the agreement is a full exchange of information by both parties. This is just a suggestion that I have found can work in situations like the current. I honestly do not know if it will work in this case as PDHC's damages are so significant and, according to the schedules filed, the estate has the capacity to pay all damages PDHC has sustained. In addition, Tony has little faith that the heirs appreciate the depth of the estate's liability or your and his ability to agree to low and high end numbers that reflect PDHC's damages and

the extent of what he, Alex and /Joe believe to be Hubie's betrayal of their trust – and perhaps more importantly, the risk at which PDHC was unknowingly placed. After considering the foregoing, if you and the heirs agree the concept is worth pursuing, I will discuss the matter further with Tony so he can discuss it with Joe and Alex. The initial agreement would have to include an agreement that no privileges are waived, all such proceedings are confidential [this is to protect Hubie's memory] and discussions cannot be used in any context outside of the agreement. While liability would have to be admitted by the estate, the 'high damage limitation' end of the agreement would protect the estate to a limited degree, and according to Tony, the 'not so low end would protect PDHC. I am simply providing a suggestion that could bring matters to an end instead with relative ease and speed instead of the years it could take to litigate the matter and close the estate. Even in light of all that has occurred, neither Tony, Alex or Joe have any interest in deriding Hubie's memory or extending the litigation unless they must.

In light of your objection to the jurisdiction of the Circuit court to hear PDHC's claims against Hubie, please find enclosed a motions filed in the probate court to remove the jurisdiction for the determination of the claims of PDHC to circuit court pursuant to 62-1-302(6)(d). I filed the motion in an abundance of caution; and even though 62-3-804(2) provides for jurisdiction of the circuit court for claims filed against the estate.

As stated previously, I would appreciate you sending all correspondence to me but directed to Tony's attention at 3400 West Avenue, Columbia, SC and by email to both ben@gmail.com and tmegna@gmaail.com. I am trying to de-escalate matters. Joe, Alex, and Tony are intent on being made whole yet they are empathetic to the interests of the heirs. I would appreciate you letting me know if your clients are interested in the suggestions I have made, and realize the intensity of PDHC's determination. At the least, we can understand where we all stand. I look forward to hearing from you.

With kind regards, I remain

Sincerely yours,

Benjamin R. Matthews

EXHIBIT C

Jay James

On 04/13/2010, Jay James <pjlaw507@bellsouth.net> wrote:
> Tony,
>
> You may mail any legal documents pertaining to the claim of PDHC to me as
> attorney for the personal representatives of the estate of Hugh Thompson.
>
> Are you counsel of record for PDHC? If not, who is? I suspect that if the
> matter is controverted, it will be necessary for you to be a witness.
>
> Jay James

EXHIBIT D

Jay James

From: "Tony R. Megna" <tmegna@gmail.com>
To: "Jay James" <pjlaw507@bellsouth.net>
Sent: Tuesday, April 13, 2010 4:46 PM
Subject: Re: Thompson estate

I will represent PDHC for now. If the PR decides to dispute the claim, & I am a witness, we will go from there. I had hoped to keep this as simple as possible but will do as needed. In the meantime, please send all correspondence to me if you would please - preferably by email. I am working with Ben & will see that he is brought up to speed in case we are unable to resolve matters.

Also, I am out of the office & was informed a little while ago that a copy of the claim had been mailed to the PR & sent to Darlington for filing. I will make certain all further correspondence goes directly to you.

I was also told someone from First Health had called me at the Darlington office. I do not know if it is about this but they obviously have similar concerns. I am to contact them when I am in Darlington. I will let them know we have talked & will work with both of you to resolve the matters.

Thanks, Tony

On 04/13/2010, Jay James <pjlaw507@bellsouth.net> wrote:
> Tony,
>
> You may mail any legal documents pertaining to the claim of PDHC to me as
> attorney for the personal representatives of the estate of Hugh Thompson.
>
> Are you counsel of record for PDHC? If not, who is? I suspect that if the
> matter is controverted, it will be necessary for you to be a witness.
>
> Jay James
> ----- Original Message -----
> From: Tony R. Megna
> To: pjlaw507
> Sent: Tuesday, April 13, 2010 11:30 AM
> Subject: Thompson estate
>
>
> Jay-
>
>
> Please forgive the additional e-mail. However, I meant to request in my
> previous correspondence that all communications and correspondence in regard
> to the claim of Pee Dee Health Care, P.A. be directed to me at the below
> physical address and e-mail address. In the event that the PR determines to
> disallow the claim of PDHC for any reason, I would appreciate being notified

> by e-mail as well as regular mail as I do not want their to be any
> controversy surrounding the question of the receipt of information by any
> party, and/or issues relating to statutory time bars. Also, could you
> please confirm whether or not you wish me to mail a copy of the proof of
> claim to the PR directly or whether providing the claim to you as her
> attorney directly is sufficient? Let me know and I will do whatever you
> request.
>
> Thanks, Tony
>
> Please send all written correspondence to:
>
> Tony R. Megna, Esquire
> 3400 West Avenue
> Columbia, SC 29203
> tmegna@gmail.com
> Office telephone: 803.799.1700
>
> This message is intended for the use of the person or entity to which it
> is addressed and may contain information, including legal and/or health
> information, that is privileged, confidential, and the disclosure of which
> is governed by applicable law. If the reader of this message is not the
> intended recipient, or the employee or agent responsible to deliver it to
> the intended recipient, you are hereby notified that any dissemination,
> distribution or copying of this information is STRICTLY PROHIBITED. If you
> have received this in error, please notify us immediately and destroy the
> related message. Thank you.
>
>

--
Sent from my mobile device

Thanks, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

This message is intended for the use of the person or entity to which it is addressed and may contain information, including legal and/or health information, that is privileged, confidential, and the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is STRICTLY PROHIBITED. If you have received this in error, please notify us immediately and destroy the related message. Thank you.

Jay James

From: "Tony R. Megna" <tmegna@gmail.com>
To: "Ben Matthews" <benrusmat@gmail.com>
Cc: <pjlaw507@bellsouth.net>
Sent: Friday, May 21, 2010 4:43 PM
Subject: Re: Thompson claim

Jay-

Think as you please. I am General Counsel to PDHC. Hubie did not tell the truth & others will testify as to those matters. My involvement was minimal other than Hubie's admission in 2007 to me that he did not tell the truth when he signed the original Medicare application. Ben's involvement is out of an abundance of caution. The estate has no reasonable defense to PDHCs claims & we intend to pursue every option available to recapture the total losses sustained - which are considerably more than the amount PDHC had to pay Medicare. As I told you originally, neither Alex, Joe nor I like any of this but the estate denied the initial claim (which was beyond reasonable) & forced PDHC to file the lawsuit.

As you speak to your clients, please let them we did not wish to go this route but that your denial of the claim left no reasonable alternative. And if you expect to resolve the matter short of trial, I suggest you reconsider your email to Ben.

Regards, Tony

On 05/21/2010, Ben Matthews <benrusmat@gmail.com> wrote:
> FYI
>
> ---------- Forwarded message ----------
> From: Jay James <pjlaw507@bellsouth.net>
> Date: Fri, May 21, 2010 at 3:13 PM
> Subject: Thompson claim
> To: benrusmat@gmail.com
>
>
> I hereby acknowledge that I received the summons and complaint, the amended
> probate claim and the first set of interrogatories and first request for
> production. I am confirming with my clients that I am authorized to accept
> service and as soon as I get this authorization I will give you formal
> notification of that.
>
> As you probably have seen, I also received an email from Tony Friday
> morning. I recommend that all communications be between you and me. At
> this stage of things I consider Tony to be a fact witness as well as the
> chief executive officer of the adverse party. I simply should not be
> communicating with him.
>
> Also please send to me the three exhibits referred to in the complaint.

>
> I will be planning to file appropriate responsive pleadings to both the
> probate and common pleas courts.
>
> Jay James
>
>
>
>
> --
> Benjamin R. Matthews
> Matthews and Megna, LLC
> Attorneys and Counselors At Law
> 843-395-8431
> 877-253-7705
>

--
Sent from my mobile device

Thanks, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

EXHIBIT E

Matthews and Megna, LLC

Attorneys and Counselors at Law
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: benrusmat@gmail.com
tmegna@gmail.com

May 3, 2012

John Jay James, II
PAULLING and JAMES, LLP
PO Box 507
Darlington, SC 29540
843-393-3381 (Telephone)
843-393-6089 (Fax)
pjlaw507@bellsouth.net (Email)

J. Renee Josey
TURNER, PADGET, GRAHAM & LANEY, PA
PO Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

Re: Pee Dee Health Care, PA v. Estate of Hugh S. Thompson
Case No: 2010-CP-16-0332
Tracking Nos: 2011203391 and 2011197671

Dear Mr. James and Mr. Josey:

Please find enclosed a stamped copy of Appellant's Final Brief for the above referenced appeals. Appellant filed a motion to consolidate the Record on Appeal on March 16, 2012. A copy of this motion was sent to both of you via mail. As such, Appellant has filed a copy of the Final Brief for each of the above referenced appeals. Also, Appellant would like to clarify that it does not waive the on-going conflicts of interest based on the dual representation of Turner Padget of clients with adverse interests. Furthermore, Appellant does not waive any attorney-client privilege, and the

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

attendant duties Attorneys for Respondent have to Pee Dee Health Care, P.A. In addition, we continue to request them to notify the courts of their adverse dual representation, and further that they take all actions to protect the interests of Pee Dee Health Care, P.A. in furtherance of the attorney-client relationship and their attendant duties of loyalty, candor, etc.

Sincerely,

Tony R. Megna, Esquire
Matthews and Megna, LLC
3400 West Avenue
Columbia, SC 29203
(803) 254-3676

Jay James

From: Tony R. Megna [tmegna@gmail.com]
Sent: Thursday, April 05, 2012 7:28 PM
To: pjlaw507; Josey, J. Rene
Cc: Matthew Dowtin
Subject: Part 1 - Proposed ROA PDHC v Thompson [Pages 1-250]

Gentlemen:

Please find attached pages 1-250 of the proposed ROA in the above-captioned matter. I will send you three additional emails that contain the remaining pages of the proposed ROA. Please let me know if you do not receive them. There will be four emails containing a total of 966 pages sent to you. Please let Wade Dowtin of my office know if there are additional documents you wish to be included in the ROA or if you have other issues in regard to the proposed ROA. Please email him at "Matthew Dowtin" waded@genesisfqhc.org Please let him know by Tuesday, April 10, 2012 in order that we may get the ROA to the printers and filed with the Court.

Please note that the Plaintiff/Appellant continues to object to the representation of the Defendant/Respondent by either of you and/or anyone connected with your law firms because of matters including but not limited to the following:

a. Mr. Josey's law firm actively represented the legal interests of the Plaintiff/Appellant both prior to and during his adverse legal representation of the Defendant/Respondent in this action without the consent of or consultation with the Plaintiff/Appellant.

b. The ethical and legal issues associated with (a) Mr. Josey's law firm's abandonment of the Plaintiff in order to continue to represent the Defendant/Respondent in the above matter against the express wishes of the Plaintiff/Appellant, (b) the continuing misrepresentations to the court.

d. The past and on-going damages to the Plaintiff/Appellant, and

e. Mr. James' participation with Mr. Josey and others after he was made aware of the dual representation matters.

The Plaintiff/Appellant as well as its' officer, employees and agents request that you and your law firms take immediate action to discontinue your adverse representation of the Defendant/Respondent and mitigate the continuing damages to the Plaintiff/Appellant, its' officer, employees and agents, and that respect your legal and ethical duties of loyalty and fealty in all particulars and in all matters concerning the Plaintiff/Appellant, as well as its' officer, employees and agents.

Please forward the foreoging information to Companion Property and Casualty so that they are aware of the requests of the Plaintiff/Appellant as their insured.

Thank you for your attention to these matters.

Tony Megna

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

Jay James

From: Tony R. Megna [tmegna@gmail.com]
Sent: Saturday, November 03, 2012 10:43 AM
To: Josey, J. Rene
Cc: ben@pdhc.com; benrusmat@gmail.com; Harriet; Jay James
Subject: Re: Record on Appeal in Disqualification Appeal

Renee

I did not make any representations in the email other than I would do exactly as you wish. As you know, the documents you Requested all already in the record. They're just not in the format you wish. Just send the documents in the format that you desire. At this point, I truly do not want know how to proceed other than for you to provide what you want and how you want it.

As a continuing caveat, please do not confuse our cooperation with the objections ss to Turner Padget's continuing violation of Rule 1.7, etc. Our objections remain in all aspects. We believe your actions to date have and continue to taint the entire litiigstion and appellate process and is unlawful and unprofessional. Regardless, we intend to follow the process You have suggested and will do as you wish as a sign of respect for the court. So I ask again to please just send us exactly what you want exactly so we can be done with this part and the court can make a decision.

Again, I sincerely appreciate your efforts and goodwill in completing this matter. Thank you.

Best regards Tony

On Saturday, November 3, 2012, Josey, J. Rene wrote:

Gentlemen,

As you know, we have filed a motion seeking compliance with Rule 210 of the SCACR with regard to the appeal from the disqualification order. That motion itself suggested possible methods to satisfy the Rule's purpose without completely starting from scratch – however we cannot speak for the Court and without Court direction, our motion for compliance and/or dismissal remains before the court. Our letters subsequent to the motion did not withdraw the motion but only sought to clarify our concerns and suggestions. We do not assume any responsibility for the preparation of the Record on Appeal and do not agree to the responsibilities suggested by your email below. At this point, we will await your filed response to the motion and any directives from the Court.

From: Tony R. Megna [mailto:tmegna@gmail.com]
Sent: Thursday, November 01, 2012 9:55 PM
To: Jay James
Cc: Harriet; Josey, J. Rene
Subject: Re: Letter

Jay-

Please provide me copies of the precise exhibits you want, they way you want them ordered, and the way you want them named. Even though the exhibits are already in the record, I have every intention of doing exactly as you wish. And I appreciate your efforts. I will be out of town tomorrow so I would appreciate you

sending the documents and information by email in pdf format to Harriet Hobbs in my office, Her email address is included in this communication. All you have to do is reply to all. Once the documents are prepared, I will have her send them to you for final approval.

As a continuing caveat, please do not confuse our cooperation with the objections to your assistance to Turner Padget in the continuing violation of Rule 1.7, etc. Our objections remain in all aspects.

Again, I sincerely appreciate your efforts and goodwill in completing this matter. Thank you.

With best regards, Tony

Thanks, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

On Thu, Nov 1, 2012 at 4:57 PM, Jay James <pjlaw507@bellsouth.net> wrote:

Tony and Ben:

The enclosed letter is being mailed to you today.

Jay

--

Thanks, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

EXHIBIT F

Josey, J. Rene

From: Jay James <pjlaw507@bellsouth.net>
Sent: Monday, August 16, 2010 9:16 AM
To: Josey, J. Rene
Subject: Fw: PDHC v Thompson

I am forwarding email received today from Ben Matthews. Please call me after you have read.

Jay

----- Original Message -----
From: Benjamin R. Matthews
To: pjlaw507
Sent: Friday, August 13, 2010 11:16 PM
Subject: PDHC v Thompson

Jay-

I have confirmed Renee was US Attorney form 1996-2001, the same time period the matters in involving Hubie's disbarment from Medicare was being investigated and apparently negotiated by the office of the US Attorney without the knowledge of PDHC. Obviously, there is a conflict of interest. Again, I suggest you review the documents from First Choice and that you join with me in obtaining the documents from the US Attorney's office so we can all be clear of exactly what occurred and when - and who was involved. As you said early on, we all need to know the facts. Please advise Renee of the matter. I imagine he will agree he cannot proceed to represent anyone under the circumstances.

Also, I am unsure of who the PR is in the estate. Is it one or both of the heirs? I would appreciate you identifying the PR. Please let me know. I suggest you prepare a consent order on regard to the sale of the property but that you agree that no estate funds will be expended [other than for preservation of estate property] pending further order of the court. We need to sort this out and I would prefer to do it with you and Tony directly as opposed to a drawn out and possibly unnecessary hearing in the probate court. If we cannot agree, then we can present the matters on which we disagree to the Court as we haven all had sufficient time to examine and understand the facts. In addition, we would appreciate a complete accounting be filed immediately with the Court as to all expenses paid by the estate so we can review it as required by the probate code. We do not agree that all the expenses you named can be paid by the estate without Court approval. Finally, I have only completed preliminary research but it appears the surety required of the PR on request of a creditor is not an estate expense especially in a situation where there is only one creditor estate is the beneficiaries.

I look forward to hearing from you as to when we can all meet. To keep your travel to a minimum, we are willing to meet in our office in Darlington. Please provide some dates. The week after next would be best.

Thanks, Ben

Please send all written correspondence to:

Benjamin R. Matthews, Esquire
3400 West Avenue
Columbia, SC 29203
ben@pdhc.com
Office telephone: 803.799.1700

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

August 20, 2010

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

Re: Estate of Hugh S. Thompson
Our File No.: 10667.101

Dear Ben:

Jay James of Darlington has shared with me your e-mail of August 13, 2010 at 11:16 p.m. Rather than further respond with an e-mail, I wanted to formally write and respond to your suggestion that I have a conflict of interest in representing the Estate of Dr. Thompson.

The mere fact that Dr. Thompson interacted with a Federal agency in an administrative capacity during my tenure as United States Attorney is not disqualifying.[1] Your e-mail suggests that Dr. Thompson's disbarment from Medicare was "negotiated by the Office of the United States Attorney . . . ." That is not consistent with the information we have and is certainly not remembered by me.

If you develop any information that suggests actual involvement by the U.S. Attorney's Office with Dr. Thompson during the period of time that I was U.S. Attorney, please let me know.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ/rmd

Cc: John J. James, II, Esquire

[1] Rule 1.11 of the Rules of Professional Conduct only prohibits my participation in matters in which I was "personally and substantially" a participant -- and even under those circumstances, the appropriate government agency can consent to my representation.

EXHIBIT G

Josey, J. Rene

From: Tony R. Megna <tmegna@gmail.com>
Sent: Thursday, February 17, 2011 11:06 AM
To: Josey, J. Rene; pjlaw507
Subject: PDHC v Thompson
Attachments: Finalized Motion to Strike 02172011.pdf

Jay and Renee-

I am in the process of responding to Renee's recent letter and preparing to file several documents, returns to motions, etc. with the Court. I will send them to you in the next dew days.

One is a Motion to Strike that I have attached for your consideration as Rule 11 contemplates. I have not attached the documents that support the motion as they were exchanged during discovery and you have copies of them. When I file the other documents, I will however, provide them to you again for your convenience in a pdf file on a CD along with an index if you wish. If you are able to agree to the Motion to Strike, or need a particular document I have listed as an Exhibit, please let me know. I will send it you by email or hard-copy as you request.

Also, I have changed my March schedule so that I am available [other than the 8th to the 13th to attend an out of state CLE I attend every year] so we can go forward with a pretrial hearing in March if you so desire. It appears [as of today at least] the Court is not interested in scheduling anything this month as Renee requested. If you receive any information to the contrary, please let me know.

Thanks for your consideration.

Regards, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

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

Pee Dee Health Care, P.A.,	
Plaintiff,	
v.	**10-CP-16-0332**
Estate of Hugh S. Thompson,	
Defendant.	

PLAINTIFF'S MOTION TO STRIKE

1. The Plaintiff, Pee Dee Health Care, P.A. is a professional medical association doing business in Darlington, SC.

2. The Defendant is the Estate of Hugh S. Thompson, M.D. Dr. Thompson died on November 5, 2009. His estate is being probated in the Darlington County Probate Court, Case number 2009-ES-16-424.

3. This court has jurisdiction pursuant to S.C. Code Ann. §62-3-803 et. seq., and in particular §62-3-804. Venue is proper in Darlington County.

FACTS

4. The basic dispute between the parties revolves about funds repaid to Medicare by Plaintiff on Decedent's behalf during a time period when, unknown to Plaintiff, Decedent was admittedly disbarred as a provider of medical services under the Medicare program, to wit:

a. Decedent admitted in May, 2004 that, in 1996, he received a letter from Medicare stating he had been disbarred as a provider in the Medicare program. [Exhibit E].

b. Decedent also received *a second letter* from Medicare in September, 1998 advising him that Medicare needed additional documentation that he had been readmitted to the Medicare program by the OIG. Decedent did not provide the additional documentation. See Exhibit O.

As noted on the affidavits provided by Plaintiff, the Decedent never informed anyone at PDHC that he had been disbarred [see Exhibits Y, Z, AA, BB, CC, DD, and EE], *and*, as noted above, he received written notices from Medicare concerning the matter *at least twice prior to his employment with Plaintiff*. [See Exhibits E and O].

5. Plaintiff maintains the Defendant is responsible for the damages it suffered as a result as detailed in Plaintiff's Complaint.

6. Decedent's original application for Medicare privileges [a Medicare form 855] dated June 16, 1998, was completed by Decedent ***prior to*** his employment with Plaintiff. [Exhibit A]. This document was obtained during discovery from the Defendant. Plaintiff did not have this application in its possession at the time it employed Decedent. The certification signed by Decedent on the original application for him to treat and bill for services provided to Medicare patient states as follows:

> I, the undersigned, certify the following:
>
> * * * *
>
> 3. I am familiar with and agree to abide by the Medicare laws and regulations that apply to my provider/supplier type (the Medicare laws and regulations are available though the Medicare contractor).
>
> 4. Neither the individual practitioner, the company, or the owner, director, officer, employee of the company, or any contractor retained by the company or any of the aforementioned persons, currently is subject to sanction under the Medicare/Medicaid program, or debarment, suspension, or exclusion under any federal agency or program, or otherwise is prohibited from providing services to Medicare beneficiaries.
>
> 5. I agree that any existing or future overpayment to me by the Medicare program may be recouped by Medicare through withholding future payments.
>
> [signed by Hugh S. Thompson, M.D. on June 19, 1998]

7. Plaintiff did **NOT** complete this application with, for, or, on behalf of Decedent.

8. When Plaintiff employed Decedent, the Decedent completed a Medicare reassignment of benefits so that Plaintiff could bill for Decedent's medical services to its Medicare patients. [See Exhibit B] The certification signed by Decedent on the reassignment of benefits application states:

> By signing this reassignment of benefits statement, you [Decedent] are authorizing the entity identified in section 1 [Plaintiff] to receive Medicare payments on your behalf.
>
> [signed by Hugh S. Thompson, M.D. on June 19, 1998]

As noted above and below in more detail, the decedent had received a second letter from Medicare in September, 1998 informing him a second time of his disbarment status as a Medicare provider and requesting he provide Medicare with his reenlistment letter from the Medicare OIG. Decedent failed t inform Plainitff of either the March, 1996 letter [Exhibit E] or the September, 1998 letter [Exhibit O].

ADMITTED STATEMENTS OF DECEDENT FROM HIS WRITTEN STATEMENT DATED MAY 28, 2004 [EXHIBIT E]

9. The Decedent stated in Exhibit E:

   a. **I concede that in 1996 I received from US Health and Human Services, or the Office of the US Inspector General, a letter informing me of my status as a Medicare provider. [See Exhibit E]. The document addressed procedures for reinstating such status. [sic] I concede, as well, that I do not have this document, and that I had [sic] completely forgotten it in by the Spring of 1998, when I was in the process of resuming medical practice.**

10. On August 31, 1998, Medicare sent a letter to Decedent's then employer, Dr. Don Fowler, reassigning Decedent's Medicare billings to Dr. Fowler's office. [Exhibit W]. The letter

from Medicare was signed by Ms. Gina Kelly.

11. On September 14, 1998, Medicare sent Dr. Thompson a request that specifically requested on page 2 that he provide Medicare with a copy of his reinstatement from the Medicare OIG. This request was signed by Ms. Kelly. The letter was sent to Decedent at the work address of his then employer, Dr. Don Fowler, PO Box 873, Marion, SC 29571. [Exhibit O].

12. In later September or early October, 1998, the Decedent approached Plaintiff requesting he be employed. [See affidavit of Mark Matthews].

13. **At no time prior to or during his employment with Plaintiff did Decedent mention he had been disbarred by Medicare in March, 1996 [Exhibit E] nor that he had received a letter from Medicare dated September 14, 1998 [Exhibit O] requesting Decedent be provided with a copy of Decedent's reinstatement from the Medicare OIG.**

ADMITTED FACTS AS STATED IN ANSWER OF DEFENDANT FILED WITH THIS COURT ON JUNE 17, 2010

14. The Decedent's medical license was suspended by the SC Board of Medical Examiners on or about May 31, 1994 and that his license to practice medicine was reinstated on or about April 14, 1998. **[Page 2, Paragraph 11 of Defendants Answer filed June 17, 2010]**.

15. On or about March 31, 1996, the Decedent was disbarred from the Medicare program by the Office of Inspector General who oversees physician participation in the Medicare program. **[Page 2, Paragraph 10 of Defendants Answer filed June 17, 2010]**.

16. On or about October 26, 1998, the "Decedent entered into a relationship with Plaintiff to provide medical services to its patients, including Medicare patients." **[Page 3, Paragraph 12 of Defendants Answer filed June 17, 2010]**. **[Page 8, Paragraphs 61 and 62 of Defendants Answer filed June 17, 2010]**.

17. In 1998, the Decedent failed to seek reinstatement to the Medicare program by the

Medicare Office of Inspector General. **[Page 2, Paragraph 11, Answer filed June 17, 2010]**.

18. Following the Decedent's disbarment from Medicare, by the Medicare Office of Inspector General, "provisions of federal law provide that a suspension of Medicare privileges [i.e., the Decedent's disbarment from the Medicare program in 1996] continues until [the Decedent was] reinstated by the Office of Inspector General [of the Medicare program]." **[Page 3, Paragraph 12 of Defendants Answer filed June 17, 2010]**.

19. On or about October 26, 1998, the "Decedent entered into a relationship with Plaintiff to provide medical services to its patients, including Medicare patients." **[Page 3, Paragraph 12 of Defendants Answer filed June 17, 2010]**.

20. The relationship of Decedent with Plaintiff was such that Decedent had a pecuniary interest since he was paid by Plaintiff as a physician to provide medical services. **[Page 5, Paragraph 25 of Defendants Answer filed June 17, 2010]**.

21. The relationship of Decedent with Plaintiff was such that Decedent "was bound to act in good faith and with due regard to Plaintiffs' interest." **[Page 4, Paragraph 21 of Defendants Answer filed June 17, 2010]**.

22. The relationship of Decedent with Plaintiff was such that Decedent "was obligated to communicate truthfully with Plaintiff. Defendant would admit that the Decedent had not been reinstated by the Office of Inspector General at the time he worked for Plaintiff..." **[Page 5, Paragraph 26 of Defendants Answer filed June 17, 2010]**.

23. Defendant admits a Medicare provider application and an 'assignment of benefits [application] were prepared [with Decedent's signature on the certifications affixed by Decedent – see Exhibits A and B attached hereto and incorporated herein by reference] so as to permit Decedent to treat Medicare patient and for Plaintiff to receive payments therefore." **[Page 2,**

Paragraph 9 of Defendants Answer filed June 17, 2010].

24. "Defendant admits that Decedent had a duty to be truthful on any and all applications, certifications, and affirmations to Medicare and/or Plaintiff." [**Page 6, Paragraph 34 of Defendants Answer filed June 17, 2010**].

25. "Defendant admits so much of Paragraph 10 of the Complaint as alleges that Palmetto GBA [the Medicare representative that oversees the payment of claims for the Medicare program in South Carolina] issued to Decedent Medicare provider number D993211724..." See Exhibit C attached hereto. [**Page 3, Paragraph 11 of Defendants Answer filed June 17, 2010**].

26. On or about June 17, 2007, the Plaintiff received a demand letter from Medicare that "would have had a content similar to that set forth in paragraph 12 of the Complaint." [**Page 3, Paragraph 14 of Defendants Answer filed June 17, 2010**]. Paragraph 12 of the Plaintiff's Complaint stated as follows:

> On or about June 7, 2007, Plaintiff received a letter dated May 30, 2007 from Palmetto GBA in regard to medical services provided by Decedent on behalf of Medicare beneficiaries for the dates of October 26, 1998 to December 10, 2001. The letter stated, among other matters:
>
> a. That the Decedent had been suspended (sanctioned) from participation in the Medicare program during the time periods March 31, 1996 to June 20, 2002.
>
> b. That during the sanction period as stated in (a), Medicare payments were paid to Plaintiff for services Decedent provided to Medicare beneficiaries because the Decedent had completed an 'assignment of benefits' to Plaintiff. However, Decedent omitted any reference in regard to this suspension from the Medicare program.
>
> c. That Plaintiff was liable for the funds paid regardless of the fact that Plaintiff had no knowledge of the matter and that Dr. Thompson had provided both Plaintiff and Medicare with false information.
>
> d. That the estimated overpayment made by Medicare for patients provided by Decedent during the time he was suspended from the Medicare program was $208,821.03 plus interest at 12.375%.

The letter of June 17, 2010 is attached hereto as Exhibit X.

27. On May 10, 2010, the personal representative of the Decedent's denied the Plaintiff's claim. **[Page 4, Paragraph 18 of Defendants Answer filed June 17, 2010]**.

28. Defendants have no knowledge of "any.... Representations made by Decedent to Plaintiff..." **[Page 2, Paragraph 10 of Defendants Answer filed June 17, 2010]**.

29. To the extent that Decedent was an employee of Plaintiff, Decedent admits that a duty of loyalty to Plaintiff was owed." **[Page 6, Paragraph 30 of Defendants Answer filed June 17, 2010]**.

30. "Decedent ... erroneously believed that filing a provider application to Palmetto GBA (a Medicare contractor) was sufficient to reinstate Decedent's status as a Medicare provider." **[top of Page 3, Paragraph 11 of Defendants Answer filed June 17, 2010 and Exhibit E]**.

31. On or about April 13, 2010, Plaintiff filed a claim with Decedent's estate. On or about May 19, 2010, Plaintiff filed an amended claim with Decedent's estate which was denied by the personal representative of the Decedent's estate, i.e., the Defendants. **[Page 4, Paragraphs 17 and 18 of Defendants Answer filed June 17, 2010]**.

32. Defendants have no information in their possession which denies the allegations of paragraph 32 of the Plaintiff's Complaint. Paragraph 32 of the Plaintiff's Complaint states:

> Decedent breached his duty to Plaintiff:
>
> a. By act of certifying to Plaintiff personally and on his Medicare applications that he was truthful
>
> b. By omission failing to inform Plaintiff of the falsity of his affirmations and certifications that he was barred from medically treating Plaintiff's Medicare patients

ADDITIONAL FACTS OBTAINED THROUGH DISCOVERY [AND AFFIDAVITS OF EMPLOYEES PROVIDED BY PLAINTIFF]

33. The Decedent's medical employment with PDHC continued until on or about December 10, 2001, when the Decedent left the employ of Plaintiff's medical practice of his own volition.

34. As part of the initial employment process and relationship, the Defendant provided information to Plaintiff representing that Defendant was fully and completely authorized under state and federal law to provide medical services to Plaintiff's patients who were Medicare beneficiaries. To this end, the Decedent completed a Medicare provider application (known as a HCFA 855] and an "assignment of benefits" application to allow Plaintiff to employ Defendant and to provide the Defendant permission to treat Plaintiff's Medicare beneficiaries. [These documents are attached as Exhibits A and B]. The Medicare applications were provided to Palmetto GBA (a private contractor who contracted with the Centers for Medicare and Medicaid Services [CMS]).

35. Decedent certified the information he was providing to Medicare and to Plaintiff was true and correct while Decedent actually knew this certification was false. [See Exhibits A and B attached hereto.]

36. Unbeknownst to the Plaintiff, the Decedent provided false and misleading information to Plaintiff and on the applications submitted to Palmetto GBA – even though the Defendant admitted in their Answer filed with this Court that Decedent had been associated with medical practices prior to this employment with Plaintiff. [**Page 3, paragraph 11 of Defendants' Answer filed with this Court on June 17, 2010**].

37. Specifically, Decedent failed to provide the information that he had been previously suspended from treating Medicare patients as he had been suspended by the Medicare Office of Inspector General from the Medicare program in 1996. Dr. Thompson's failure to provide the

required information concerning his suspension resulted in the continuation of his suspension as a Medicare provider of healthcare service. Dr. Thompson had been notified in writing by the Office of Inspector General on or about March 31, 1996: [See Exhibit F]

a. That he was suspended and excluded as a provider from the Medicare program as well as all other federal health care programs, and

b. That he could not be reinstated in the federal Medicaid program until he requested such in writing and was approved in writing.

38. After the SC Board of Medical examiners reinstated Dr. Thompson's medical license in 1998 [his medical license had been suspended on or about May 31, 1994] [See Exhibit G], Dr. Thompson failed to seek reinstatement to the Medicare program through the Office of Inspector General as he was required to do but instead filed a false application with Palmetto GBA [the Medicare contractor who administers Medicare in South Carolina on behalf of the federal government through the agency known as the Centers for Medicare and Medicaid Services [CMS]. Decedent thus certified the information he was providing to Medicare and to Plaintiff was true and correct while Decedent actually knew this certification was false.

39. Decedent failed to inform Plaintiff of this suspension from the Medicare program.

40. As a result of the false information provided by Decedent on the application to Palmetto GBA [the Medicare contractor], and to Plaintiff, Decedent:

a. was assigned a Medicare provider number (D993211724 - effective October 26, 1998, see Exhibit C by Palmetto GBA, and

b. was employed by Plaintiff to provide medical services to Plaintiff's patients, including Medicare patients.

41. Even though the Medicare provider numbers were issued, the Defendants admitted they

were in violation of 42 CFR 1001.1901(1) which provides that Dr. Thompson's suspension from the Medicare program continued until the suspension was lifted by the Medicare Office of Inspector General. Defendant also admitted in its Answer that the Decedent's Medicare disbarment continues until [the Decedent was] reinstated by the Office of Inspector General [of the Medicare program]." **[Page 3, Paragraph 12 of Defendants Answer filed June 17, 2010]**. Dr. Thompson failed to do this, failed to notify Plaintiff, and continued to provide false information to the Plaintiff during the remainder of his employment with Plaintiff.

42. On or about July 30, 2002, Dr. Thompson's filed a subsequent Medicare enrollment application for reenrollment in the Medicare program. [See Exhibit H] In this application, Dr. Thompson admitted he had been previously suspended as a Medicare health care. On or about this same date, Dr. Thompson was reinstated as a provider of Medicare healthcare services by the Medicare Office of Inspector General. [See Exhibit I]

43. On or about June 7, 2007, Plaintiff received a letter dated May 30, 2007 from Palmetto GBA [See Exhibit X] in regard to medical services provided by Decedent on behalf of Medicare beneficiaries for the dates of October 26, 1998 to December 10, 2001.

44. On or about July 11, 2007, Plaintiff received a letter from the Decedent's then-current employer, First Health Care, [See Exhibit U] indicating Decedent's attorneys [Wes Jackson of Nexsen Pruett] had filed a request for reconsideration request to Medicare. A copy of the letter from Mr. Jackson is attached hereto as Exhibit Q.

45. Plaintiff appealed the requests for recoupment of the funds noted above. The appeals were not successful. The Decedent was aware of the appeals being conducted by Plaintiff, and provided the Plaintiff limited documents to assist in the appeal. See Exhibit V.

46. The Plaintiff did not receive further documents or information from Decedent or his

employer even though such information was promised. See Exhibit P and U.

47. Regardless, Plaintiff appealed Medicare's adverse determinations concerning Dr. Thompson. See Exhibits R and T.

48. The administrative appeals ended in decisions of both the Medicare Administrative Law Court and the Medicare Appeals Council denied the appeals. [See Exhibits N and S].

49. Following the denial of all administrative appeals, and on or about May 1, 2008, Plaintiff paid to Medicare the sum of $226,740.19.

50. On or about April 13, 2010, Plaintiff filed a claim with Decedent's estate. A copy of that claim is attached hereto as Exhibit J.

51. On or about May 19, 2010, Plaintiff filed an amended claim with Decedent's estate. A copy of that claim is attached hereto as Exhibit K.

52. On May 10, 2010, the personal representative of the Decedent's denied the Plaintiff's claim.

The Law supporting Plaintiff's Motion

Pursuant to Rules 12(f) and 12(h)(3), the Plaintiff respectfully requests this Court to strike all defenses of the Defendants in its Answers [Exhibit L] that fail to state a legal defense to the claims of Plaintiff, including but not limited to those defense are legally and factually insufficient, redundant, and/or immaterial as a matter law, including but not limited to all of the Defendants defenses to the action bought by Plaintiff.

A

ESTOPPEL BY SILENCE

Negligence will take the place of the intent to deceive when there is a duty to disclose."
Southern Dev. Land and Golf Co, Id.
[See paragraphs 26 and 34 of their Answer filed with this Court on June 17, 2010]

Estoppel by silence arises when the estopped party owes a duty to speak to the other party but refrains from doing so, thereby leading the other party to believe in an erroneous state of facts, and that a "manifest intent" to mislead is not required for estoppel by silence. Estoppel by silence arises when the silence is intended ***or*** has the effect of misleading the other party. In addition, estoppel arises when the estopped party fails to act at the "first proper and opportune moment." *Metromont Materials Corp. v. Pennell,* 270 S.C. 9, 239 S.E.2d 753 (1977).

Our Supreme Court has held:

> ... Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts. *Ridgill v. Clarendon County,* 192 S.C. 321, 6 S.E.2d 766 (1939). Silence, when it is intended, or when it has the effect of misleading a party, may operate as equitable estoppel. *Welch v. Edisto Realty Co.,* 170 S.C. 31, 169 S.E. 667 (1933). There is no requirement that the person whose silence misleads another have actual knowledge of the true facts if circumstances are such that knowledge is necessarily imputed to him. *Accord Alwes v. Hartford Life & Accident Ins. Co.,* 372 N.W.2d 376 (Minn.Ct.App.1985). Negligence will take the place of the intent to deceive when there is a duty to disclose. *Id; see also* 3 *Pomeroy's Equity Jurisprudence* § 809 at 218 (5th ed. 1941).
>
> *Southern Dev. Land and Golf Co. v. South Carolina Pub. Serv. Auth.,* 426 S.E.2d 748 (1993), *aff'g in part and rev'g in part* 305 S.C. 507, 409 S.E.2d 428 (Ct.App.1991).
>
> See also *Macaulay v. Howard*, 230 S.C. 140, 94 S.E. (2d) 393. In *Hubbard v. Beverly*, 197 S.C. 476, 15 S.E. (2d) 740, 135 A.L.R. 1206, we held that the doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury.

As noted above, the Defendants have admitted facts supporting the application of the doctrine of estoppel by silence and concealing material facts from Plaintiff [as well as the doctrine of unclean hands] including but not limited to the following:

a. The Decedent's license to practice medicine was revoked in 1994 (**paragraph 11 of Answer**),

b. The Decedent was disbarred by Medicare Office of Inspector General on March 31, 2006,

c. The Decedent's license to practice medicine was revoked in 1994 (**paragraph 10 of Answer**),

d. The Decedent's failed to seek reinstatement to provide services to Medicare patients (**paragraph 11 of Answer**), and

e. The Decedent's disbarment as a Medicare physician provider of medical services, under federal law, continued until he was reinstated by the federal Office of Inspector General which admittedly did not occur until 2002 (**see paragraph 12 of the Decedent's Answer**).

f. The Decedent had a duty to be truthful on both the Medicare applications and all documents he certified and signed,

g. The Decedent had a duty to be truthful in his dealings with the Plaintiff. **See paragraphs 26 and 34 of their Answer filed with this Court on June 17, 2010.**

h. The relationship of Decedent with Plaintiff was such that Decedent "was bound to act in good faith and with due regard to Plaintiffs' interest." **[Page 4, Paragraph 21 of Defendants Answer filed June 17, 2010]**.

In addition to the foregoing, the attached affidavits and documents (that have been provided to all parties during discovery) confirm that the only credible and reasonable evidence before this Court is that Dr. Thompson, having a an admitted duty to speak the truth to the Plaintiff and to protect Plaintiff's interests, did not do so, staying silent (negligently or otherwise) concerning his status as a disbarred physician from the Medicare program during his employ with Plaintiff.

Even if this Court finds that the Decedent did not intentionally mislead the Plaintiff (which Plaintiff respectfully asserts is not a reasonable conclusion based on the evidence before this Court), our Supreme Court has held that "...negligence will take the place of the intent to deceive when there is a duty to disclose." *Southern Dev. Land and Golf Co,* supra. *As stated in their Answer filed June 17, 2010 filed in this Court, and as noted above, the Defendants have admitted that the Decedent had a duty to be truthful on both the Medicare applications he signed, had a duty to be truthful in his dealings with the Plaintiff.* **See paragraphs 26 and 34 of their Answer filed with this Court on June 17, 2010.**

Based on the admissions of the Answer of the Defendants as more fully stated hereinabove, it can reasonably be inferred that, at best, the Defendant negligently failed to provide the truth of his status as disbarred physician from Medicare. As the Defendants have admitted in their Answer that the Decedent had a duty to disclose the truth of his disbarment from Medicare, (see paragraphs 26 and 34), the Defendant's admitted negligence is sufficient to take the place of the intent to deceive.

B

DOCTRINE OF UNCLEAN HANDS

In addition to the foregoing, none of the defenses asserted in the Defendants Answer are available to the Defendants due to the doctrine of 'unclean hands.' The doctrine of "unclean hands" precludes a party from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the other. *Arnold v. City of Spartanburg,* 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943); *First Union Nat'l Bank of S.C. v. Soden,* 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998); *Robinson v. Estate of Harris,* ____ S.C. ____, (Opinion no. 26914 Filed January 24, 2011]. ["See also the discussion in 4 A. L. R., 58, and the cases

cited in subsection (c) on that page, for authority for the proposition that the party to a suit complaining of a wrong must have been injured thereby in order to justify the application of the principle of "unclean hands" to the case of his opponent. See also the further discussion in 4 A. L. R. 106, sub section (b)."]

As evidenced by his signatures on the documents and certification signed by Decedent, the sad and un-debatable truth is that the Decedent knowingly misrepresented to Medicare, the Plaintiff, and others the truth surrounding his disbarment from the Medicare program. He did so repeatedly; and he did so after:

a. Not responding to the requirements for readmission set forth in the original debarment letter of March, 1996,

b. Not responding to a second letter form Medicare in September, 1998 [Exhibit O], and

c. Not informing the Plaintiff of either the original debarment notification of March, 1996 nor the letter of September, 1998. [Exhibit F].

d. Not providing the Plaintiff a copy of the 'ALJ Joe" order dated January 22, 2008] [Exhibit M] after obtaining independent counsel [Exhibit Q] and, and promising to provide Plaintiff all such information. [Exhibit P].

Knowledge is seldom susceptible of proof by direct evidence and may be proved by circumstances from which such knowledge may be inferred. See *State v. Atkins*, 205 S.C. 450, 32 S.E. (2d) 372; *State v. White*, 211 S.C. 276, 44 S.E. (2d) 741 (1947). Neither the Plaintiff nor its representatives knew nor had reason to know of the Decedent's disbarment from the Medicare program. [See exhibits attached hereto.] In fact, as demonstrated by Exhibit O, Decedent had actual notice of his disbarment form Medicare <u>again</u> in September, 1998. Moreover, as noted on

the attached affidavits [Exhibits Y, Z, AA, BB,CC, DD, EE] the Plaintiff specifically relied upon the Decedent's representations to both Plaintiff and Medicare that he was being truthful – which he was not. The Defendants have admitted in their Answer, they have no knowledge or information that would rebut the allegations of the Plaintiff and the supporting affidavits attached hereto. **[Page 2, ¶ 10, second sentence, of Answer of Defendants filed June 17, 2010]**.

In reliance on the false statements and misrepresentations of the Decedent, the Plaintiff submitted claims to Medicare on behalf of Decedent that Decedent *actually knew were false*. ["[A]though the parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process.... When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472, 477 (1997). *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) ("He who seeks equity must do equity.") (quoting *Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967)).

The Plaintiff respectfully submits it is difficult to fathom a scenario as to how the Defendant could reasonably request this Court to deny the relief requested by Plaintiff considering:

a. the facts admitted by the Decedent himself, and

b. the facts admitted in the Defendants Answer, and

c. the remaining documents and affidavits before this Court.

It is equally difficult to imagine how the Plaintiff could have acted more reasonably and equitably than it did in contesting the claim of Medicare when it was first advised of the matter in 2007 -- particularly in light of the Decedent's proven failure to advise of the 'ALC Joe order.'

In this regard, the Decedent and his representatives and agents obtained an order, known as the [the 'ALJ Joe' order dated January 22, 2008] [Exhibit M] on behalf of Dr. Thompson and his then-current employer, First Choice Health Care of Florence, that was favorable to his position, and would have been favorable to Plaintiff. However, the Decedent, his agents and representatives failed to provide the 'ALJ Joe determination' [Exhibit M] even though they had promised to keep Plaintiff apprised of such matters. [Exhibit P]. As a result, PDHC did not have the opportunity to present the favorable 'ALJ Joe determination' as a defense to the claims made by Medicare against PDHC and Dr. Thompson or to the Independent Review entity for Medicare or to the Medicare Appeals Council. This is particularly relevant as the ALJ determination made on behalf of PDHC and Dr. Thompson was dated March 14, 2008 [Exhibit N] while the 'ALJ Joe order,' as noted above was filed January 22, 2008.

These matters are further complicated by the fact that the Defendant probate estate is represented by the sole beneficiaries of the estate. The estate representatives, however, are bound to act in the best interests of the beneficiaries of the estate, of which Plaintiff is one. The inherent conflicts of interest for the Defendant and the probate estate, and their counsel, in the case at bar are particularly remarkable in light of:

1. The fact that the Defendant and the Personal Representatives of the probate estate are being represented by the same counsel as the representatives of the estate,

2. The admissions made by the Defendant in its original answer, the admissions of the Decedent, the documents available to all parties, and

3. The Motion to Amend the original answer in which the Defendant seeks to modify it answer to deny facts it has previously admitted and certified as true under the attestation

provisions of Rule 11, S.C.R.Civ.P.[1] This issue is addressed further in the Plaintiff's Return to the Defendant's Motion to Amend.

Either negligently or intentionally, the Decedent, as well as his agent and representatives, failed to provide the "Joe ALC order" to Plaintiff. In addition to issues of negligence, breach of fiduciary duties for duties voluntarily undertaken, and others, the Plaintiff respectfully submits, at the least, that in light of the admissions made by the Defendants in their Answer as well as the attached documentation and affidavits, the doctrines of 'unclean hands," the doctrine of 'estoppel by silence,' and negligence, at the minimum, prevent the Defendants from asserting any defense to the claims of Plaintiff.

CONCLUSION

Based on the Decedent's own admissions, the Decedent's own certifications, the admissions as stated in Defendant's answer filed with this Court on June 17, 2010, and the additional reasons stated herein, Plaintiff requests pursuant to Rules 12(f) and 12(h)(3), S.C.R.Civ.P. that all defenses asserted by the Defendants in its Answer to the Plaintiff's Complaint be stricken as legally and factually insufficient, redundant, and/or immaterial as a matter of law due to Decedent's 'unclean hands.' In the alternative, and additionally, the Defendant is estopped from asserting any defense to the Plaintiff's claims due to the Decedent's intentional or negligent silence in the face of his admitted duty to speak the truth to Plaintiff in the first instance based on the March,

[1] *Aiding and Abetting a Client's Breach of Fiduciary Duty*, Katrina Lewinbuk, College of Law, Arizona State Law Journal, Vol. 40, No 1, 2008.

1996 debarment letter [Exhibit F], and in the second instance, based on the September, 1998 letter. [Exhibit O].

Respectfully submitted,

Tony R. Megna
Attorney-at-Law
3400 West Avenue
Columbia, SC 29203
803.799.1700

February ____, 2011.

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

Pee Dee Health Care, P.A., **Plaintiff,** **v.** **Estate of Hugh S. Thompson,** **Defendant.**	**CERTIFICATE OF SERVICE** **10-CP-16-0332**

The undersigned hereby certifies, on the date indicated below, copies of the following documents in the above-captioned matter were served upon the Defendant's Counsel for Defendant:

John Jay James, Esquire
PO Box 507
Darlington, SC 29540
[hand-delivery]

Renee Josey
1851 W. Evans Street, 4th Floor
Florence, SC 29501

1. Plaintiff's Memorandum in support of its Motion for Summary Judgment
2. Plaintiff's Return to Defendant's Motion to Compel
3. Plaintiff's Return to Defendant's Motion to Amend its Answer
4. Plaintiff's Return to Defendant's Motion to Disqualify Counsel
5. Plaintiff's Motion to Strike together with its supporting Memorandum
6. Plaintiff's documents and affidavits in support of its Returns, Motions and request for a pretrial conference.

_____
Mark Matthews

February _____, 2010.

EXHIBIT H

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON *Ex Parte:* Desa Ballard *In re:* Pee Dee Health Care P.A., Plaintiff, Vs. Estate of Hugh S. Thompson Defendant.	)	IN THE COURT OF COMMON PLEAS Case No. 2010-CP-16-0332 **ORDER FOR SANCTIONS AGAINST TONY R. MEGNA**

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

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

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

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

FINDINGS OF FACT[1]

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

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

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

5. When Megna was disqualified as counsel in this case, there was separate and unrelated litigation involving different parties pending in the Richland County Court of Common Pleas in a matter entitled *James A. Anasti v. Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court*, Case No. 2007-CP-40-0576 (the Richland case). Megna represented defendant Gina L. Lee in the Richland County case.

6. Other than Megna being counsel for a party in each case, the two cases are completely unrelated to one another. Megna is the only common denominator.

7. As more fully detailed in an Order issued this date in the Richland case, there have been numerous state court appellate proceedings, all initiated by Megna on behalf of his client Gina Lee, as well as bankruptcy proceedings involving Lee as the debtor in the United States Bankruptcy Court for the District of South Carolina.

8. In the Richland case, the plaintiff James Anasti was represented by attorney Douglas N. Truslow (Truslow). Truslow continued to represent Anasti throughout the several state appeals initiated by Megna on behalf of Lee, all of which appeals were subsequently dismissed based on procedural grounds; the merits of the appeals could not be reached because of Megna's repeated failures to comply with various deadlines.

9. In attempts to escape the consequences of his failure to comply with the rules, Megna made false statements to the circuit court and the appellate court, as more fully described by Judge L. Casey Manning in Orders dated April 8, 2008 and April 1, 2009 in the Richland case, where he found Megna's explanations for his delay to be false and intentionally manipulative.

10. According to Truslow, because of appellate and ethical issues he encountered in dealing with Megna in the Richland case, Truslow associated and consulted with Ballard, who has experience in both fields. In September, 2011, in connection with of one of the appeals filed by Megna (on behalf of Gina Lee) at the South Carolina Court of Appeals, Ballard executed an affidavit which Truslow submitted to the Court of Appeals addressing the insufficiency of an appellate documents filed by Megna.

11. On or about July 30, 2011, Ballard was served with a subpoena signed by Megna as counsel for the plaintiff, bearing the caption in this case, seeking production of certain materials, including copies related to her communications with several attorneys, including Truslow, several of the lawyers involved in this case, and other lawyers which apparently have no relation to this case or the Richland case.

12. Ballard was not counsel for nor otherwise involved in the instant case in any way. The subpoena sought information related to the assistance she provided to Truslow in the Richland County case, and sought to discover if any evidence existed of her communications with a list of attorneys whom Megna apparently believed to be his adversaries in this or other cases. The subpoena sought nothing relevant to this case. The subpoena purported to be issued from Darlington County, although Ballard's

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

13. Ballard had no knowledge of the instant case, but when she received the subpoena, she located information to identify some of the attorneys involved. She obtained a copy of this Court's Order dated April 15, 2011, in which Megna was disqualified as counsel for the corporate plaintiff in this case.

14. Ballard filed and served an Objection to the subpoena. Since Megna had been disqualified in this case as counsel for the plaintiff, she served her objection on attorney Benjamin R. Matthews, who was listed on the Darlington County Clerk's website as Megna's law partner and also counsel for the plaintiff in the instant case.

15. She also filed and served a Motion for Sanctions on August 4, 2011, which argued that Megna had attempted to subpoena her records for an improper purpose, and in violation of this Court's order disqualifying him as counsel.

16. Truslow also filed a motion for sanctions in the Richland County case dated March 9, 2012. Ballard's motion for sanctions in this case was consolidated with Truslow's motion for hearing before this Court.

17. Prior to the hearing in this matter, Megna provided the Court and counsel with a document, bearing the caption in both cases, entitled "Synopsis." This document contained a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others. As best the Court can understand Megna's allegations against Ballard, they arise from a contact to her office by Megna in which he sought to associate her on a potential unrelated case on behalf of Pee Dee Health Care. Ballard's associate responded that Ballard would consider looking at the matter if she

was paid hourly and she never heard back from Megna. She was never asked to represent Megna and no confidential information concerning Megna or his client was provided to her[2]. Neither Megna nor his client contacted Ballard again until the subpoena was issued in this case.

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

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

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

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

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

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

22. The subpoena to Ballard was issued in violation of this Court's order disqualifying Megna as counsel, sought privileged information regarding the advice she had given to Truslow, and constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose, *inter alia*, of seeking to deflect sanctions against himself in the Richland case.

23. Between his conduct in this case and in the Richland case, Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client.

24. The inevitable conclusion is that Megna has, under the auspices of this case, attempted to subpoena Ballard, as well as her legally protected files, even though he has been disqualified, and that his intentions were fully improper. The Court has no choice but to conclude that he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow in the Richland case.

25. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Richland case and he is in willful violation of this Court's orders, specifically including the Order disqualifying him as counsel for the plaintiff. He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in the Richland County case.

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

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

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

JMB 8

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

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

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

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

JMB 9

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

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

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

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

JMB 10

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

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

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

Criminal Contempt Citation Against Mr. Megna, *sua sponte*

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

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

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

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

THEREFORE IT IS ORDERED:

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

IT IS SO ORDERED.

J. Michael Baxley
Circuit Court Judge

February 11, 2013

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

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY S.C.

Order
2010-CP-16-0332

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-40-0576

James A. Anasti
PLAINTIFF(S)

Lance Wilson, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Douglas N. Truslow	Tony R. Megna	$31,842.39
		$
		$

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

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

Circuit Court Judge

2121
Judge Code

2-11-13
Date

For Clerk of Court Office Use Only

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

Douglas N. Truslow, Esquire
Post Office Box 1465
Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

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

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OEF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Case No.: 2007-CP-40-0576
)	
Ex Parte:)	
)	
Douglas N. Truslow,)	**ORDER FOR SANCTIONS AGAINST TONY R. MEGNA**
)	
JAMES A. ANASTI,)	
Plaintiff,)	
)	
vs.)	
)	
LANCE WILSON,)	
WILLIS GOODWIN,)	
GINA L. ANASTI LEE,)	
and RICHLAND COUNTY)	
CLERK OF COURT,)	
)	
Defendants.)	
)	

Plaintiff's counsel Douglas N. Truslow (Truslow) moves[1] for sanctions against Tony R. Megna (Megna), counsel for Defendant Gina L. Anasti Lee (Lee), in connection with improper subpoenas and discovery served upon him and a member of his staff in this matter and in an unrelated civil action pending in Darlington County, *Pee Dee Health Care P.A. v. Estate of Hugh S. Thompson*, Case No. 2010-CP-16-0332 (the Darlington case)[2]. The motion is granted based upon the findings of fact set forth below.

Stated succinctly, the reason that this Court had to consolidate sanctions motions hearings in two separate and unrelated cases pending in two different circuits is because of Megna's

[1] Truslow's motion is dated March 9, 2012.

[2] This Court had previously issued several orders in the Darlington action. The instant case was pending in Richland County; Chief Administrative Judge James R. Barber assigned this Court to hear both motions. Hearing was held in Darlington on May 15, 2012.

actions that this Court finds to be gross civility and professionalism violations. Having been disqualified as counsel because he was a material witness in *Thompson*, Megna continued to serve discovery under his signature in that case in violation of this Court's Order, which this Court had to quash; thereafter, Megna again served similar and additional discovery, this time under the auspices of the *Anasti* case in Richland, a case that had nothing to do with the discovery requests, and which by that time was concluded as to his client. Moreover, the discovery was not meritorious as to any case-related issues, but propounded solely to vex the recipients.

FINDINGS OF FACT[3]

1. This Richland case was filed by Plaintiff James A. Anasti (Anasti), through his counsel Truslow, to declare Anasti's ownership of real property at 2325 Two Notch Road in Columbia, and for an accounting for money allegedly due to Anasti from Defendant Gina Anasti Lee (Lee) and other defendants. Megna appeared as counsel for Lee in this action.
2. Summary judgment on the merits was granted to Anasti on October 26, 2007, with a damages hearing against Lee and others to follow. That damages hearing has yet to be held. Instead, Megna began a series of appeals that has lasted four (4) years (with two remands to the circuit court) in both the South Carolina Court of Appeals and Supreme Court. These appeals finally concluded with the Supreme Court's denial of Megna's petition for certiorari on October 28, 2011.

[3] The findings of fact are made from this Court's detailed review of the Clerk of Court's files in both this case and the Darlington county case. Both files were made available to this Court prior to a motions hearing held in this matter on May 15, 2012.

3. Neither of the appellate courts addressed the merits of this action. The appeals were dismissed because of Megna's repeated failures to comply with deadlines set forth in both the South Carolina Rules of Civil Procedure (SCRCP) and the appellate court rules (SCACR).

4. Prior to Megna's first appeal, Truslow filed a Rule 11 sanctions motion against Lee and Megna on November 7, 2007. That motion has not been heard and is not addressed in this Order; however, the pendency of that additional sanctions motion is relevant, as discussed later herein.

5. By the time the appellate proceedings in this case concluded, Lee had been discharged in bankruptcy[4] and, consequently, absolved from any risk of a money judgment in this suit. After that time, any and all pleadings filed or discovery served by Megna, ostensibly on Lee's behalf, were undertaken solely by Megna for his own benefit, to defend Truslow's pending Rule 11 sanctions motion.

JWB 3

6. During the appellate proceedings, the case was remanded by the Court of Appeals to Circuit Judge L. Casey Manning on two (2) occasions to determine whether Megna's representations regarding the timeliness of his filings and receipt of notice by him were credible and accurate.

7. On both remands, Judge Manning found that Megna's various explanations to the courts as to when he received documents and when he received notice were "not

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[4] *In re: Gina Anasti Lee*, Case No. 09-02854-jw (United States Bankruptcy Court, District of South Carolina). An order was issued by United States Bankruptcy Judge John Waites on November 9, 2009 for the purpose of lifting the stay to allow these state court proceedings to continue. Judge Waites' order was based, at least in part, on Anasti's representation that he would not seek any financial recovery against Lee. *Id*. (Docket No. 34 at page 6). Thus, it was clear as early as November 9, 2009 that the only issue which remained pending as to these parties was Anasti's November 7, 2007 motion for Rule 11 sanctions. Because of Lee's bankruptcy, Anasti's Motion for Rule 11 sanctions was pending only against Megna and not his client Lee. Lee was discharged in bankruptcy on April 16, 2010.

credible" and that he had made material misrepresentations of fact to the courts. Order dated April 3, 2008."*Id.* at ¶ 13; Order date-stamped April 1, 2009.

8. Following the conclusion of the state court appellate proceedings, Truslow requested a status conference so that, *inter alia*, Anasti's Rule 11 motion against Megna could be scheduled. A status conference was held on the record on January 18, 2012. At the status conference, Megna acknowledged and confirmed that Lee's involvement in the case had ended and Rule 11 sanctions were being sought against him only[5].

9. In February of 2012, under the caption of this case but indicating issuance from Darlington County, Megna served[6] a subpoena on Truslow to take his deposition and that of attorney Steve Licata (who represented Anasti in the bankruptcy matters) as well as Truslow's assistant, Amanda Hilley. He also served discovery requests upon Truslow which asked for a broad range of materials related to Truslow's communication with a number of lawyers[7] in the State, none of which have anything to do with this case.

10. Like the earlier subpoena served on attorney Desa Ballard (Ballard) in the Darlington county case (see separate sanctions order issued simultaneously in Darlington Case No. 2010-CP-16-0332 for additional sanctions arising from this conduct), the

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[5] On February 24, 2012, the Richland County Clerk of Court set Anasti's damages hearing against other defendants for March 12, 2012. That hearing was apparently not held, presumably because this sanctions motion was pending, although the two issues (damages against other defendants and sanctions against Megna) are unrelated.

[6] "Service" was made by email to Mr. Truslow, with a mailed copy sent to Mr. Truslow at 944 Richland Street, Suite 4, Columbia, which is not now nor ever has been Mr. Truslow's address. It appears that throughout this litigation, in both the circuit and appellate courts, Mr. Megna has forwarded mail to Mr. Truslow at incorrect or non-existent addresses, causing great confusion in the progress of the case.

[7] Jay James, J. René Josey, Kenneth Woodington, Steve Licata, Andy Savage, Caroline Streater, Celeste Jones, Ashley Stratton, any lawyers in the McNair Law Firm or their agents, any lawyers in Turner Padgett Law Firm or their agents, Thomas Earle, and Curtis Dowling.

discovery sought production of communications between Truslow and lawyers who Megna believed to be adverse to him in matters unrelated to this case.

11. Megna's former client in this case, Lee, has submitted an affidavit indicating she did not authorize the discovery by Megna, was not aware of it, and did not approve it. She indicated that Megna was no longer her lawyer at the time the discovery was served on Truslow.

12. By the time Megna served the subpoenas and propounded discovery to Truslow, the merits of this matter had been long decided (summary judgment had been granted to Anasti in October, 2007). Anasti had waived any damages or sanctions claims against Lee. All that remained to be adjudicated in this matter (as far as Megna was concerned) was Anasti's Rule 11 motion against Megna. As indicated above, Megna had also been disqualified as counsel in the Darlington case.

13. On March 9, 2012, Truslow filed the pending Motion to Quash and for other relief, including sanctions against Megna, in connection with the discovery.

14. Megna e-mailed this Court an unsolicited letter and 54-page "Synopsis" on March 19, 2012. The "Synopsis" contained the caption of this case, as well as the Darlington county case.

15. In the "Synopsis," Megna asserted that the Court of Appeals had previously and "unanimously denied" Truslow's March 9, 2012 motion. In addition, Megna leveled a number of claims of professional misconduct on the part of a number of attorneys, including Ballard, whose own motion for sanctions was pending in the Darlington action.

16. Truslow provided the Court with voluminous evidence refuting the allegations contained in Megna's "synopsis." This included Truslow's affidavit with detailed time records, the affidavit of former client Gina Lee, an affidavit of a legal assistant in Truslow's office, an affidavit of Ballard verifying that the fees sought by Truslow were reasonable in light of the issues raised by Megna, memoranda, and other documents.

17. Truslow asked that the Court take judicial notice of the Clerk of Court's files in the Thompson case in Darlington and relevant appeals; the "Florence cases" (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706); Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); the "companion" cases; and, Lee's bankruptcy case.

18. Megna neither objected, nor filed any counter-affidavits at the hearing on both motions, and his counsel handed up a memorandum with numerous attachments.

19. This Court has taken judicial notice of and considered the various records on file with the respective Clerks of Court, and has considered the other voluminous documentation referenced.

20. Much of the materials and argument asserted by Megna, to which Truslow necessarily responded and which this Court reviewed and considered, is completely irrelevant to the issues of the pending motion for sanctions. The Court has had to sift through mountains of materials as a result of Megna's efforts to dissuade this Court from looking at the merits of the issue actually presented. Unfortunately, the irrelevance could not be determined by the Court until all of the material was

reviewed. An immense amount of judicial time has been required to review these matters, only to discover that most of it was unnecessary.

21. The arguments in Megna's "Synopsis" are fragmented and illogical, but fervently presented; however, they are wholly without merit. The Court of Appeals has never considered sanctions with respect to Megna's service of discovery upon Truslow. Megna's other arguments can be summed up as follows: Megna does not like Truslow and/or Anasti and has hurled multiple accusations against them in an effort to deflect the Court from Megna's own misconduct. None of Megna's accusations have merit.

22. The Court notes that Megna has not heeded previous admonitions about his conduct. In his Orders on remand (April 3, 2008 and April 1, 2009) in this case, Judge Manning found that Megna had made "repeated and gross misrepresentations" to the Court, and he had made "unwarranted, unjustified and untrue attacks on opposing counsel." That has continued. This Court intends to stop it now.

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23. Megna has willfully, deliberately, and unapologetically attempted to misuse the legal process through both this case and the Darlington case (as more specifically described in the order issued this date in *Thompson*). He has engaged in such misconduct for ulterior purposes in seeking to defend his own personal interests in this case.

24. Megna's conduct is willful and deliberate. In both his "Synopsis" and the memorandum, he continued to hurl fabricated allegations of misconduct upon Ballard, Truslow, and multiple others he considers to be adverse to him.

25. A substantial component of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless. This Court

would be faced with an entirely different scenario if Megna had at any time admitted his misconduct and shown remorse to any degree, or had he apologized for his continuous affronts upon the Court and his colleagues.

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

27. Even viewed separately from Megna's conduct in the Darlington County case, Megna's conduct is ill-conceived, vitriolic, and abusive. When the evidence from both cases is viewed together, Megna's conduct is alarming and disturbing. He has engaged in a concerted effort to abuse the legal process in both cases for his own purposes, abusing this Court, his colleagues, and adverse parties in the process.

28. Megna's conduct in this case cannot be justified, nor condoned. The Court has both actual and inherent authority to address these matters, to preserve the integrity of the court system, to ensure respect for Court Orders and Court rules, and to protect litigants and counsel from further abusive conduct. Megna's conduct clearly violates the SCRCP, and Rule 11 provides ample authority for the Court to impose sanctions. *Ex Parte: Bon Secours and St. Francis Xavier Hospital Inc.,* 393 S.C. 590, 713 S.E.2d 624 (2011).

30. Truslow has requested, by way of Rule 11 sanctions, an award for the time and expenses he incurred in responding to Megna's efforts at improper discovery. I find and conclude that Truslow did in fact expend the amount of time set forth in his fee and cost affidavit. The hours of legal time expended were both reasonable and necessary under the circumstances, given Megna's conduct.

31. The matter before this Court was made exceedingly difficult and contentious by Megna. His claims were convoluted and, though without any merit, were serious and have been time-consuming to address. The time expended by Truslow, as well as the basis for its expenditure, was well documented and confirmed independently.

32. Truslow's requested fees are reasonable, designed merely to compensate, and are justified. No loadstar multiplier has been utilized by this Court. Truslow is entitled to an award of fees and costs against Megna in the amount of $31,547.25, plus $295.14 in costs (for a total of $31,842.39), as set forth in his detailed affidavit and time sheets.

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

GMB 9

34. It is an unfortunate circumstance when the Court must induce someone to be civil, but it is an entirely different matter when a licensed professional such as Megna so seriously misuses the procedural processes and legal mechanisms of this Court in such an abusive manner, with an ulterior motive, and repeatedly in violation of previous Court Order(s).

CRIMINAL CONTEMPT CITATION AGAINST MR. MEGNA, *SUA SPONTE*

35. In presiding over these matters, this Court has undertaken a full review of the pleadings, discovery, previous Court Orders, correspondence, memoranda, and emails from Attorney Megna in both cases, together with review of applicable attorney oaths and disciplinary rules, as well as an analysis of prevailing law and Supreme Court decisions involving attorney

conduct. As indicated in the language of this Order, this Court is concerned that the conduct of Attorney Megna reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, consistently uses language that is accusatory and demeaning directed at opposing counsel, includes inappropriate references to the judiciary, and contains unwarranted criticisms of other professionals, parties, and witnesses. Moreover, this Court finds that Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the Court system.

Because of the willful misconduct set forth throughout the body of the factual findings herein and the factual findings in the Darlington County case set forth by Order issued this same date, the Court has determined to conduct a hearing to require Mr. Megna to show cause why he should not be held in criminal contempt of this Court for intentionally and willfully violating a Court Order. Mr. Megna is hereby advised that he has the right to counsel during such hearing, and shall be given an opportunity to present arguments to the Court. Mr. Megna is hereby specifically advised that a finding of criminal contempt by this Court may subject him up to six (6) months' imprisonment therefor, in addition to other sanctions. This Show Cause and Sanctions hearing is hereby set for March 18, 2013, beginning at 2:00 p.m., after the call of the regular non-jury roster for that day, in the fifth floor courtroom of the Darlington County Courthouse. Service of this Order upon Attorney Megna and his counsel shall constitute service of the Notice of Contempt hearing upon Mr. Megna.

SERVICE OF ORDERS ON OFFICE OF DISCIPLINARY COUNSEL, *SUA SPONTE*

36. Under these circumstances, the reasons required for Megna to self-report this Order are self-evident. Megna is and shall be required to report (service by certified mail) this Order and the concomitant sanctions to Lesley M. Coggiola, Director of Office of Disciplinary Counsel (Post Office Box 12159, Columbia, South Carolina, 29211); together with an explanatory transmittal cover letter, within thirty (30) days of service of this Order upon him. Megna's report is to include at a minimum a copy of the Orders of the Honorable L. Casey Manning issued on April 3, 2008 and April 1, 2009, as well as the within Order. Megna shall enumerate in detail the documents being served/delivered, together with the signed return receipt or affidavit of service within the same time frame. Proof of service shall be required by Megna to be filed with the Richland County Clerk of Court in this matter and with the Darlington County Clerk of Court in Thompson.

NOW, THEREFORE IT IS ORDERED:

1. Plaintiff's March 9, 2012 motion is granted.
2. This Order shall be filed in such a manner as to make clear to the respective Clerks of Court in Richland and Darlington Counties that the Court has issued a related Order in Thompson (10-CP-16-0332), as well as in this case.
3. Sanctions are imposed upon Tony Megna personally as outlined hereinabove to include:
   a. Megna shall be and is required to pay Plaintiff's Counsel the sum of $31,842.39 within thirty (30) days, and the Clerk shall issue a civil judgment therefor.

b. Said sums shall be and are to be deemed a non-dischargeable, legal judgment, accruing interest at the legal judgment rate.

4. Megna shall self-report to the Office of Disciplinary Counsel.

   a. His report shall include this Order, as well as Judge Manning's orders dated April 3, 2008 and April 1, 2009.

   b. Megna shall enumerate in detail the documents being submitted to ODC by certified mail, return receipt requested.

   c. He shall then file same with the respective Clerks of Court in Richland and Darlington Counties.

   d. Furthermore, he shall copy respective Counsel in his filings with the Clerks of Court.

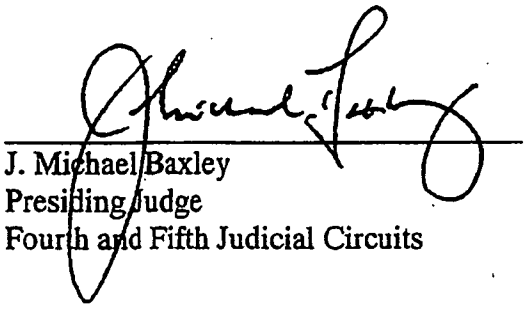
   e. Megna shall be and is required to take this action within thirty (30) days of service of the within Order.

   f. Megna shall appear at a Criminal Contempt Show Cause Hearing at the Darlington County Courthouse on March 18, 2013.

5. Parallel sanctions are being imposed in Thompson (10-CP-16-0332) pending in Darlington County.

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

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge
Fourth and Fifth Judicial Circuits

Hartsville, South Carolina
February 11, 2013

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

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WRITER'S DIRECT DIAL: (843) 656-4451
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September 6, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson*
Case No.: 2010-CP-16-0332
Tracking No.: 2011-185767 (1st appeal), 2011-197671 (2nd appeal), and 2011203391(3rd appeal)
TPGL File No.: 10667.101

Dear Ms. Kitchings:

Enclosed you will find an original and six copies of the following documents for filing with your Court:

1) Respondent's Motion for Appellate Court Sanctions in these consolidated appeals,

2) and Proof of Service.

I have enclosed one extra copy of these documents so that a filed copy can be returned for my records in the self-addressed envelope provided. Also enclosed is this firm's check in payment of the filing fee for this motion.

By copy of this letter to all counsel as indicated below, we are serving them as indicated in the corresponding proof of service. Thank you for your assistance in this matter.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:vlb
Enclosures
Cc: Jay James, II, Esq. (w/enclosures via email only)
Benjamin R. Matthews, Esq. and Tony R. Megna, Esq. (w/enclosures)
James M. Griffin, Esq. and Arial E. King, Esq. (w/enclsoures)

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332

CONSOLIDATED APPEALS

(Tracking number 2011185767)(1st Appeal)
(Tracking Number 2011203391) (3rd Appeal)
(Tracking Number 2011197671)(2nd Appeal)

Pee Dee Health Care, P.A. .....Appellant,

v.

Estate of Hugh S. Thompson .....Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Motion for Appellate Court Sanctions by depositing copies of the same in the United States mail, postage prepaid, on September 6, 2013, to all counsel of record at the following addresses:

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

Tony R. Megna, Esquire
Matthews & Megna
3400 West Avenue
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James M. Griffin, Esquire
Ariail E. King, Esquire
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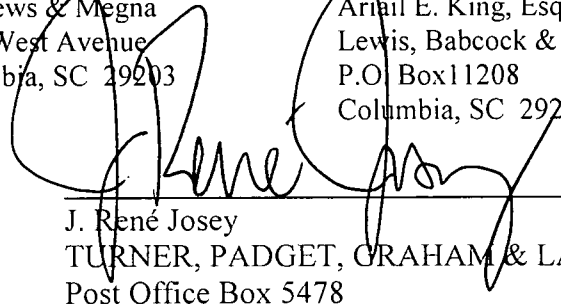

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