

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Judge
Case No. 2012-CP-26-3859

Thomas Rickerson

Appellant,

vs.

John Karl, M.D. and Virginia Bell, CS, FSP

Respondents

RECEIVED

SEP 11 2013

SC Court of Appeals

**APPELLANT'S RETURN
TO THE MOTION TO STRIKE**

COMES NOW THE APPELLANT, by and through his undersigned counsel who would submit the following memorandum in opposition to the Motion to Strike.

**MEMORANDUM IN OPPOSITION
TO THE MOTION TO STRIKE**

I. Respondents' Filing is Deficient

Initially, Appellant would assert that the motion to strike should be dismissed for two procedural reasons: (1) the grounds for the motion are not stated within the motion itself as required by Rule 240, SCACR; and, (2) the Record on Appeal has not been filed in this appeal, and therefore, respondents were required to file either an affidavit or other documents to support their claim as required by Rule 240(c)(3). Thus, because the motion

fails to comply with Rule 240, SCACR, and Rule 240(c)(3), SCACR, it should be dismissed. See Rule 240(g), SCACR.

Discussion

Rule 240, SCACR states in pertinent part in the introductory paragraph of the rule,

All motions or petitions filed in an appellate court shall be in writing, *shall state the grounds thereof* and shall comply with the requirements of Rule 267.

Emphasis added. Respondents' motion fails to state the grounds for the motion. The motion states only that, "The grounds for this motion are set forth in the accompanying memorandum of law." The Appellate Court Rules do not contemplate that the memorandum cures a deficiency in the motion. A memorandum is required to be filed *in support of* the motion. Rule 240(c) (2), SCACR. Thus the memorandum *is not* the filing which states the grounds for the motion. Rather, it is a "memorandum with citation of authorities in support of the motion." Rule 240(c) (2), SCACR. We respectfully submit that the filing of a memorandum cannot act as a cure of facial deficiencies in the motion itself. Even if it could cure defects, respondents' memorandum fails to clearly identify the grounds for the motion to strike in this case and, as discussed *infra*, is without merit.

Secondly, Respondents have not submitted an affidavit or any documentation in support of their motion to strike. The Record on Appeal has not been filed in this appeal.

Rule 240(c) (3), SCACR states that

Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

Respondents have failed to comply with this provision of Rule 240, SCACR. Respondents have not submitted any documentation in support of their motion to strike and they merely argue conclusory positions with respect to events past which are taken out of context with no evidentiary support or specificity. For example, respondents state in the memorandum, “Judge Culbertson’s post-judgment comments are not proper matters to be included in the record on Appeal because they are not considerations or action which occurred while the matter was pending.” Memorandum at page 4. However, we are not told what the comments were or their subject matter. This Court cannot tell what is being objected to, to what the comments relate, or even why the comments were made. The Motion to Strike filing is deficient.

Rule 240(g), SCACR states, “Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.” In this case, respondents have failed to state the grounds for their motion and they have neglected to attach any affidavits or other documents to support their claims. Thus, the motion should be deemed abandoned and dismissed as deficient

II. Items 21 and 22 are Appropriate Items to be Included in the Record on Appeal Pursuant to Rules 205, 209 and 210

Item 21 proposed by the Appellant is an email from the trial judge to the parties relating to the impact of *Ross* on the trial court’s decision to reconsider the motion to dismiss in the event the parties agreed to dismiss the appeal and bring the matter back before the trial court. **Exhibit 1.** Item 22 is respondents’ response. **Exhibit 2.** The items proposed by Appellant are proper items to be included in the Record on Appeal. This is so because the judge’s email clarifies his thinking on the distinction between time limits set forth in S.C. Code Ann § 15-79-125 being jurisdictional or not. Respondents’

memorandum fails to demonstrate to the contrary. *Argument I* in the memorandum for example states only that the materials proposed by Appellant, “are not proper matter related to this appeal.” Memorandum of Respondents at page 3. This is not a statement of grounds for the motion to strike because it doesn’t state why the items are improper. Respondent argues further that Rule 209, SCACR limits the material to be included in the Record on Appeal to those items which are “properly included,” and thus, items 21 and 22 should be excluded. This reasoning is circular and Appellant disagrees with it.

As stated above, item 21 proposed by Appellant is an email from the trial judge himself about this case and this appeal and how the trial court’s ruling would have been affected by the Supreme Court’s opinion in *Ross v. Waccamaw Community Hospital*, Op. No. 27276 (S.C. Sup. Ct. filed June 26, 2013). See Exhibit 1. The trial judge in this case was the same trial judge in the Ross case. Clearly such a document would be related to this appeal, contrary to the position asserted by respondents in the framing of their argument. The item clarifies the trial court’s thinking at the time of its denial of the motion to reconsider which had been filed by Appellant. A reasonable construction of the Court’s email is that a different holding would have been reached if the trial court had had the benefit of the *Ross* opinion.¹ The trial judge is stating that its ruling was jurisdictional in nature and not based on alleged misconduct (alleged delay) by the

¹ Appellant submits it is always proper to submit authority to the Court which is decided subsequent to the filing of an appeal. The trial judge’s email is the beginning of that process we respectfully submit. Moreover, Rule 205, SCACR states in part, “Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” The trial court is corresponding with the parties about matters not affected by the pending appeal. It is respondent’s resistance to this communication that is corroborative of Appellant’s position in this appeal and such is demonstrated in item 22 responding to item 21 from the trial court.

Appellant as asserted by the respondents.

Rule 209, SCACR would not preclude including the trial court's email in this instance because, again, the trial court is letting these parties know the ruling would have been different had the *Ross* opinion been available to the trial court at the time of its ruling. Respondents' are asserting that Appellant has committed bad conduct warranting dismissal of his case with prejudice *as a sanction* not as a matter of jurisdiction. Under this circumstance, Appellant is forced to choose to continue his appeal rather than go again before the trial court just to give respondents further opportunity to distinguish *Ross*. Based on respondent's resistance to mediation, it is Appellant's belief respondents themselves would appeal an adverse trial court opinion. Thus, to appeal at this time is viewed as being in the interest of judicial economy and an effort to save time by the Appellant.

Additionally, Rule 210, SCACR does not support respondents' position. The item which was "not before the court" argued by respondent is essentially the *Ross* opinion itself. This is so because items 21 and 22 are correspondence between the court and the parties about the merits of this case and the impact of *Ross* on the merits of the case. It is for this reason that the items proposed by Appellant are not extraneous to the materials which should be available to this Court in this appeal. They amount to a statement by the trial judge himself that he would have reversed himself had *Ross* been available to him at the time of the ruling as the time limits in S.C. Code Ann § 15-79-125 were not jurisdictional.

Appellant's proposed item #22 is a responding email from respondents' counsel to the trial judge about this appeal. (See Appellant's Exhibit 2). Appellant has included

this correspondence in the Record on Appeal because it reflects the mental state or defiant attitude of respondents even after the *Ross* opinion, and their dogged determination to avoid having to mediate this case anyway or having it heard on its merits. Appellant filed the Notice of Intent to File Suit on May 15, 2012. *Sixteen* months later, and even after *Ross*, respondents still resist participating in even a mediation conference in this case. The items proposed by Appellant noted above demonstrate this resistance and the proposed items corroborate Appellant's position as asserted in this appeal.

Appellant's defense at the motion to dismiss hearing was that respondents' counsel misled the Appellant with respect to its discovery subpoenas. Exhibit 3 (Tr. 4 - 10. Respondents' subpoenas were sent to medical providers with satisfactory assurance by respondents' counsel, thus lulling Appellant into a false sense of security about the time limits for mediation and their application to this case. Respondents switched counsel and after the statutory time limit expired, filed a motion to dismiss with prejudice.² **Exhibit 4.** This was so even though the respondents had never attempted to communicate with the mediator. At minimum respondents' conduct violated ADR Rule 4 because *the parties* had not scheduled the mediation.³ Appellant argues that both parties share the responsibility of scheduling the required mediation.

CONCLUSION

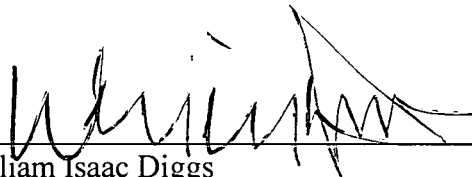
² Respondents had two attorneys of record. Forty five subpoenas had been issued by Lydia Magee, Esquire. She received court protection due to maternity leave, **Exhibit 5**, and Marian Scalise, Esquire filed the motion to dismiss on December 20, 2012, even though respondents had provided copies of records received in response to subpoenas as late as December 6, 2012.

³ ADR 4(f) states, "*The parties* shall notify the selected or appointed neutral to initiate scheduling of the ADR Conference." Emphasis added d not scheduled the mediation.

Respondents' motion to strike should be dismissed because it is deficient for failing to state the grounds for the motion within the body of the motion, and for its failure to include any affidavits or other documentation in support of the motion to strike. Even if the motion is considered on its merits, the Appellant's proposed items 21 and 22 are properly included in the appeal because they (1) shed light on the thinking of the trial judge at the time the order of dismissal with prejudice was entered and (2) they demonstrate the determination of respondents not to mediate this case even in the face of the trial court's expression of opinion in the email and the publication of the *Ross* opinion by the State Supreme Court.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
Tele: 843-626-4243
Fax: 843-626-5123

**ATTORNEY FOR THE APPELLANT,
THOMAS RICKERSON**

This 9th day of September, 2013
Myrtle Beach, South Carolina

**ATTACHMENTS TO MEMORANDUM
IN OPPOSITION TO MOTION TO STRIKE**

1. Item 21 (Judge Culbertson's email to counsel for the parties relating to the Ross opinion)
2. Item 22 (Marian Scalise email response to Judge Culbertson's email set forth above)
3. Portions of Transcript of April 22, 2013 hearing before Judge Culbertson (Appellant's initial argument to the trial Judge, pages 4-11)
4. Motion to Dismiss
5. Lydia Magee's letter of protection for maternity leave

Bill Diggs

From: Culbertson, Benjamin H. [bculbertsonj@sccourts.org]
Sent: Thursday, June 27, 2013 5:07 PM
To: 'william.diggs@myrtlebeachlaw.com'; mscalise@richardsonplowden.com
Cc: Culbertson, Benjamin H. Law Clerk (Megan Moricle)
Subject: RE: Rickerson v. Karl (2012-CP-26-3859)

I know that Mr. Diggs has appealed my denial of his Motion to Reconsider in the above referenced case; however, I just read the Supreme Court opinion in *Ross v. Waccamaw Community Hospital, et al.* that just came out yesterday. That decision reversed me on the identical type of case involving the same legal arguments (i.e., what to do in medical malpractice cases when the parties do not mediate within the time limits of 15-79-125). I'm not sure what to do at this point as I know I don't have jurisdiction given Mr. Diggs' appeal. But, I want both of you to know that my decision would have been different had *Ross v. Waccamaw Community Hospital* been out when the Motion to Dismiss was heard or the Motion to Reconsider submitted. At the time of *Ross*, we had no appellate guidance. So I ruled knowing that the decision would be appealed and the question answered ultimately by the Supreme Court.

For what this is worth, I remain

Very truly yours,

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, SC
Phone: (843) 545-3030
Fax: (843) 545-3282
Email: bculbertsonj@sccourts.org

Bill Diggs

EXHIBIT 2

From: Marian Scalise [MScalise@RichardsonPlowden.com]
Sent: Wednesday, July 03, 2013 11:29 AM
To: 'Culbertson, Benjamin H.'; Bill Diggs
Cc: Culbertson, Benjamin H. Law Clerk (Megan Moricle); Sheila Bias; Beth Hales
Subject: RE: Rickerson v. Karl (2012-CP-26-3859)

Judge Culbertson,

I am sorry that I am just now getting back to you. I was at the Fourth Circuit Judicial Conference in West Virginia, and I needed to talk to my clients about this latest turn of events. For what it is worth, we believe you ruled correctly. We contend the present case is distinguishable from the *Ross* case and would appreciate you hearing us on that.

My clients have agreed to allow me to consent to Mr. Diggs withdrawing his appeal, and we appreciate the opportunity to revisit this issue. Would you prefer we submit written briefs on this issue and/or have formal oral argument? We look forward to hearing from you.

I hope that each and every one of you has a wonderful holiday.

Thanks for your consideration,

Marian Scalise

Marian Williams Scalise, Esquire
843-448-1008 ext. 304
843-424-3592 cell

EXHIBIT 3

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2012-CP-26--03859

COUNTY OF Horry

THOMAS RICKERSON,)
)
)
-vs-)
)
)
JOHN KARL and VIRGINAI BELL,)
)
Defendants.)

APRIL 22, 2013

B E F O R E:

HONORABLE BENJAMIN H. CULBERTSON

A P P E A R A N C E S:

WILLIAM J. DIGGS, Esquire
Attorney for the Plaintiff

MARIAN W. SCALISE, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

* * *

1 Rules of Civil Procedure, and that rule would
2 authorize dismissal of the action with prejudice as
3 a lawful sanction. We would ask this matter be
4 dismissed with prejudice.

5 THE COURT: All right.

6 Mr. Diggs?

7 MR. DIGGS: Your Honor, here is what happened
8 from my perspective. We filed the notice of intent
9 to file suit and immediately defendants began to
10 send subpoenas for medical records and of course
11 under the HIPA law they sent those subpoenas to me
12 on behalf of my client so that we could sign off,
13 you know, agree and allow them to go ahead and
14 collect the necessary medical records. There were
15 a number of doctors that were contacted by the
16 defendants and each time we would get a copy of the
17 subpoena and we would agree to allow the defendants
18 to collect the medical records and continue to
19 collect information that they needed in order to
20 prepare for the mediation. Nobody ever said
21 anything to me about the time limits in this
22 particular situation.

23 The view that I took from the time limits
24 that are set in the statute is that unless the
25 parties were enforcing those and made an issue of

1 those time limits, that as long as the discovery
2 process was continuing to unfold and neither party
3 was concerned about running out of time in order to
4 mediate the case, that it would be acceptable to
5 the parties to mediate the case when the parties
6 became ready to do that.

7 Now, there is nothing, contrary to what
8 counsel is arguing, I don't see anything in the
9 statute that says jurisdiction is lost in this
10 situation, that an amendment can't be filed.

11 THE COURT: Excuse me for interrupting.
12 Doesn't it say, though, it shall be, what it is,
13 shall be mediated within 90 days but in no event
14 more than 120 days?

15 MR. DIGGS: It does, with the Court's
16 approval with respect to additional time. Now, the
17 way I read that, Your Honor, is if one of the
18 parties wants to enforce the time limit for the
19 mediation they can do that and the Court has the
20 obligation, I would submit under the statute the
21 Court is given authority to enforce the provisions
22 of the statute certainly with respect to the time
23 limitations but only if someone makes an issue of
24 the time limitation. At that time, Your Honor, I
25 didn't see a need to cut off the discovery process

1 and say, "Look, no more, we're going to set this
2 case for mediation." Miss Scalise or no one from
3 her office ever said they had intended to do that.

4 Your Honor, what the ADR Rule 4 says also is
5 that the parties, Rule 4(F) says the parties,
6 plural, have a responsibility to notify the
7 mediator, not just the plaintiff, but the parties
8 do and the defendant as much as the plaintiff in
9 the case failed to do that. I would argue that you
10 can't just place on the plaintiff the
11 responsibility to mediate the case because if you
12 have got a defendant that is not willing to do that
13 and that is playing coy in some fashion you're
14 going to run out the clock just as they did in this
15 case and they are trying to impose the death
16 penalty on your case because you were misled or
17 fooled into not pressing them on the time limit and
18 then after that happened getting thrown out of
19 court with prejudice.

20 Now, what happened, Your Honor, we initially,
21 when we filed this notice back on May 15th of 2012,
22 the notice itself, the filing was defective because
23 I neglected to put in our interrogatory under the
24 requirements that the statute has with respect to
25 your standard interrogatories and I didn't put the

1 little form on there that allows for the clerk at
2 the time of filing to write in and appoint a
3 mediator, and so when I learned that Miss Scalise
4 was going to make an issue of this, the time limit,
5 she filed her motion to dismiss on December 20th
6 and still in December I know of at least one
7 occasion we received medical records from the
8 defendants on this case, indicating they were still
9 undertaking discovery in the case. But when she
10 filed her motion to dismiss on the 20th, if I can
11 back up, that was right after the clerk in this
12 Court had sent out a notice of mediation
13 requirement and appointed a mediator in the case.
14 That was done on December the 13th.

15 And so when I got the notice from the clerk's
16 office, I received it on December the 19th and I
17 immediately notified or contacted the mediator Mr.
18 Pierce and contacted Miss Scalise's office and
19 tried to get some times set to have the mediation.
20 At that point we did set mediation for January 22nd
21 but two things happened. The mediator had a
22 scheduling conflict and had to back out of that
23 particular mediation and Miss Scalise ignored my
24 response, or my effort to get dates from her office
25 about mediating the case.

1 And so we filed a return on December 24th to
2 her motion to dismiss, indicating that dismissing
3 this case would be premature because our Statute of
4 Limitations wasn't even going to run until July of
5 2013, and so what I did was we filed an amended
6 notice on January 4th, amended notice of intent to
7 file suit and in that we of course put our
8 interrogatory responses in there and we made, put a
9 place, stated the name of the mediator that had
10 been court appointed by the clerk and the Court.

11 To the best of my knowledge that was
12 ignored. I transmitted a copy of that amended
13 filing to the mediator, I didn't get any response,
14 I don't believe, from Miss Scalise's office, there
15 was no motion to dismiss or anything of that
16 nature. If I'm wrong on that point I apologize.

17 But we sent several letters out, Your Honor.
18 I would like to make them part of the record. I
19 copied Miss Scalise on those, simply contacting,
20 showing the contacts we made with the mediator.
21 And actually to no avail because by that time it
22 was clear that the defendants were not going to
23 mediate the case and the mediator didn't really, he
24 was kind of in a quandry, didn't know what to do in
25 that situation and so we kind of stood down, made

1 the decision he wasn't going to do any mediation in
2 the case.

3 So, what I'm arguing is that it was
4 certainly not the intent of this statute to cut
5 off, and when I say the statute, I mean --

6 THE COURT: Tell me what the intent of the
7 statute is.

8 MR. DIGGS: I think the intent is to give the
9 defendants an opportunity to look at a case,
10 mediate the case before having to respond to a
11 formal lawsuit. And I would submit that is what
12 the time limitations are put in here for. It is
13 not to cut off the plaintiff's access to the courts
14 but to give the defendants an opportunity.

15 THE COURT: But how much time and opportunity
16 do we give them?

17 MR. DIGGS: Well, I would think it certainly
18 was cleared up when the clerk of this court issued
19 an ADR notice appointing mediator and referring the
20 case to mediation.

21 THE COURT: Well, the problem I have, I will
22 agree with you, all I can tell you is what the
23 statute says, and the statute says that within 90
24 days and no later than 120 days from the service of
25 notice of intent to file suit the parties shall

1 participate in a mediation conference unless an
2 extension of no more than 60 days is granted by the
3 Court upon a finding of good cause.

4 MR. DIGGS: Right.

5 THE COURT: That has got to mean something.

6 MR. DIGGS: What that means, I would submit,
7 Your Honor, is if the time limits, if a defendant
8 wants to make use of those time limits, or a
9 plaintiff, they can certainly invoke those and cut
10 off the plaintiff's right to proceed and go through
11 this particular process, but even if, even if we
12 have a mediation and it fails, which it is likely
13 to do because I think reasonably everyone expects
14 that a complicated case such as a medical
15 malpractice case is not going to settle early on
16 unless there is some really good reason for that to
17 happen and I would argue that that is certainly the
18 exception as opposed to the general rule. Cases
19 generally don't settle until later in the discovery
20 process and later in the litigation process.

21 But the statute goes on to say, Your Honor,
22 under Subsection E, after the portion that you
23 read, within 60 days after the mediator determines
24 mediation is not viable, that an impasse exists or
25 the mediation should end or prior to the expiration

1 of the statute of limitations, whichever is later,
2 the lawsuit can be filed.

3 And so what we have here is a situation, I
4 would argue, is where the defendants chose, and it
5 is reasonable, I don't slight the defendants for
6 doing this, they chose not to mediate but they were
7 offered that opportunity, the plaintiff offered
8 them an opportunity to mediate, they chose not to
9 and so I would certainly submit that with the
10 passage of time the mediator would be reasonable to
11 conclude or determine that mediation is not viable
12 in the case or that an impasse exists or that the
13 mediation should end, so I would argue that statute
14 clears up a problem such as the one that evolved in
15 this case because mediation wasn't held within that
16 time frame. That would permit, if mediation
17 opportunities was afford all the parties, they
18 chose not to do it, mediation is not viable, so I
19 would assert that gives the plaintiff the right at
20 that point within the time frames included in the
21 statute to file the lawsuit.

22 THE COURT: All right. I'm going to go ahead
23 and make these Plaintiff's Exhibit 1.

24

25 (Letters marked as Plaintiff's Exhibit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Thomas Rickerson,)
)
 Plaintiff,)
)
 -vs-)
)
 John Karl, M.D. and Virginia)
 Bell, CS, FNP,)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2012-CP-26-3859

MOTION TO DISMISS

MELANIE HUGGINS-WARD
 CLERK OF COURT
 12 DEC 20 PM 12:09
 HORRY COUNTY

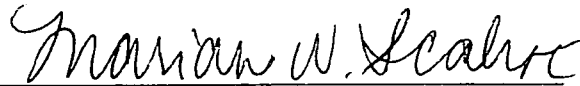
TO: WILLIAM ISAAC DIGGS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendants, will move before the Judge of the Court of Common Pleas, on the tenth (10th) day after the service hereof, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, pursuant to South Carolina Code Ann. § 15-79-125(C), for an Order dismissing the Notice of Intent and preventing a Summon and Complaint from being filed in this matter on the basis that a mediation conference was not held within the statutory time frame of within 120 days from service of the Notice of Intent to File Suit. Section 15-79-125(C) requires a mediation conference as a condition of this type of action. Defendants were served on or about June 14, 2012; thus, mediation should have taken place on or before October 12, 2012. Plaintiff did not request a mediation extension from the Court for an additional sixty days (until December 11, 2012). Instead, Plaintiff's first request to mediate this case was by telephone request on December 19, 2012. Pursuant to Section 15-79-125(E), Plaintiff may initiate a civil action by filing a summons and complaint only if the matter cannot be resolved through mediation. Since Plaintiff failed to

mediate the case, he cannot initiate a civil action. As such, Plaintiff fails to satisfy the statutory requirements to proceed with this litigation, and it must be dismissed with prejudice.

Said Motion will be based upon the statutes, case law, pleadings, affidavits, memoranda, depositions, and any other evidence that may be received by the Court hereinafter to be served.

Respectfully submitted,



Marian Williams Scalise
Lydia L. Magee
Richardson, Plowden & Robinson, P.A.
2103 Farlow Street, P.O. Box 3646
Myrtle Beach, SC 29578
(843) 448-1008
mscalise@richardsonplowden.com

Attorneys for Defendants John Karl, M.D. and Virginia Bell, CS, FNP

December 19, 2012.

Myrtle Beach, South Carolina

RULE 11 CERTIFICATION

The attorney below hereby certifies that either:

- A. She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the Motion; or
- B. Such consultation would serve no useful purpose, or could not be timely held; or
- C. Due to the nature of the Motion, there is no duty to consult opposing counsel in that this is a Motion:

- a. To Dismiss
- b. For Summary Judgment
- c. For New Trial
- d. For Judgment NOV

HIGBY COUNTY
12 DEC 20 PM 12:09
MELANIE HUGHES, CLERK
CLERK OF COURT

Marian W. Scalise

Marian Williams Scalise
Lydia L. Magee
Richardson, Plowden & Robinson, P.A.
2103 Farlow Street, Suite B, P. O. Box 3646
Myrtle Beach, SC 29578
(843) 448-1008
Attorneys for Defendants John Karl, M.D. and Virginia Bell, CS, FNP

CERTIFICATE OF SERVICE

I, the undersigned employee of Richardson, Plowden & Robinson, P.A., attorneys for the Defendants John Karl, M.D. and Virginia Bell, CS, FNP, certify that I have served the foregoing document by personally depositing in the United States Mail a copy of the same, postage prepaid, addressed to the attorneys as indicated below:

William Isaac Diggs, Esquire
Law Offices of Williams Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Beth Hales
Beth Hales

HORRY COUNTY
12 DEC 20 PM 12:09
MYRTLE BEACH COURTHOUSE
CLERK OF COURT

12-20, 2012.

Reply to:
Myrtle Beach
limagee@richardsonplowden.com
Ext. 301

September 6, 2012

The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit
1301 Second Avenue, Ste. 3A30
Conway, SC 29526-5234

Re: Order of Protection

Horry County Cases

Marion Adam vs. Dr. Cornelius Beck d/b/a Inlet Dental Center, Inc.
C/A No.: 2012-CP-26-300
Our File No.: 155-394

Karen E. Carpenter, as Personal Representative of the Estate of Donald A. Carpenter, Jr., Deceased v. Kevin E. Cullen, DO; Daniel J. Gordon, MD; Carolina Hospitalists, LLC; John A. Rogowski, Jr., MD; J.A. Rogowski, P.C.; Conway Emergency Group, LLP; Edward Botse-Baidoo, MD; Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists; and Grand Strand Regional Medical Center, LLC
C/A No.: 2011-CP-26-3968
Our File No.: 155-383

Edward Daniel Carroll v. Horry County, Horry County Sheriff's Department, Conway Hospital, Inc. d/b/a Conway Medical Center, Team Health, Inc. d/b/a Team health Hospitalist Group, Martin A. Duclos, M.D., Elham Novin-Baheran, M.D., Paul Gordon, M.D., and Kevin Cullen, D.O.
C/A No.: 2012-CP-26-1245
Our File No.: 4961-111

Tammy DelaCruz, as Next Friend of Marco DelaCruz, a minor v. Dr. Tracey Golden, M.D. and Magnolia OB-GYN, LLC of Myrtle Beach
C/A No.: 2012-CP-26-3611
Our File No.: 5412-091

Gene A. Dunlap and Bonnie L. Dunlap v. Daniel L. Rosner, M.D., Coastal Carolina Otolaryngology Associates, P.A. and Grand Strand Regional Medical Center, LLC
C/A No.: 2012-CP-26-1002
File No.: 5412-087

Letter to The Honorable Steven H. Johnson
September 6, 2012
Page 2

Kelley Gault, Individually and as Personal Representative of the Estate of John W. Gault, Jr. v. Loris Community Hospital and Pamela Sue Grim, M.D.
C/A No.: 2011-CP-26-5005
Our File No.: 5412-066

Christina Mills Lahn and Ricci Lahn, Individually and as Guardian ad Litem for Nash Lahn, a minor v. Nancy D. Benson, Brenton Juberg, M.D., North Strand OB/GYN, P.C., Loris Community Hospital, and Loris Healthcare System n/k/a McLeod Loris/Seacoast Hospital
C/A No.: 2012-CP-26-4983
Our File No.: 155-403

Phyllis Lupo vs. Gregory S. Mencken, M.D., Carolina Radiology Associates, LLC, Conway Hospital, Inc. and John and Jane Does 1-10
C/A No.: 2012-CP-26-2118
Our File No.: 155-398

Mariann Muscolino, as Personal Representative of the Estate of Alma Speranza, Deceased v. Timothy Cornnell, M.D., Cardiology/Gastroentrology Associates of Myrtle Beach, P.A., Paul Hyler, M.D., Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists and Grand Strand Regional Medical Center, LLC d/b/a Grand Strand Regional Medical Center
C/A No.: 2011-CP-26-8156
Our File No.: 7693-002

John Richards, as Personal Representative of the Estate of June Richards, Deceased v. Jose Convalecer, M.D., Saria Almo, P.A., Scott Mayhew, M.D., Lyle Shelver, M.D., Crystal Lilly, P.A., Strand Physician Specialists, P.A. d/b/a Carolina Health Specialists, Charles T. Walls, Jr., M.D., Charles T. Walls, Jr., M.D., P.C. d/b/a Diagnostic Pathology Partnership, Edward L. Proctor, Jr., M.D., Edward L. Proctor, Jr., M.D., P.A. d/b/a Diagnostic Pathology Partnership, Melanie A. Hopkins, M.D., Hopkins Pathology, P.A. d/b/a Diagnostic Pathology Partnership and Grand Strand Regional Medical Center, L.L.C. d/b/a Grand Strand Regional Medical Center
C/A No.: 2011-CP-26-5717
Our File No.: 155-387

Thomas Rickerson v. John Karl, M.D. and Virginia Bell, CS, FNP
C/A No.: 2012-CP-26-3859 (Notice of Intent)
Our File No.: 5412-089

Letter to The Honorable Steven H. John
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Gregory and Floretta Rush, as natural Guardians of Harmoniee Shantell Rush, a minor
under the age of 14 years v. Conway Hospital, Inc. d/b/a Conway Medical Center
C/A No.: 2012-CP-26-3852
Our File No.: 4961-073

Robert H. Stephenson as the Personal Representative of the Estate of Dorothy J.
Stephenson, Deceased v. Grand Strand Regional Medical Center, LLC; Jessica
Thasitis, RN; Hospitalist Group for Grand Strand Regional Medical Center, LLC;
Kyaw Hein, MD; Cardiology/Gastroenterology Associates of Myrtle Beach, PA;
Joseph Trask, MD; and Mark P. Karavan, MD
C/A No.: 2012-CP-26-3852
Our File No.: 7693-010

Dominick M. Vallario v. Allen Smolenski, MD; Richard Schmitt, MD; James
Merritt, MD; Matthew J. Metz, MD; and Jacob Robinson, MD
C/A No.: 2012-CP-26-5265
Our File No.: 155-405

Charles Vanderhorst, both individually and as Personal Representative of the Estate of
Tyreatha Vanderhorst v. Magnolia OB-GYN, LLC of Myrtle Beach and Tracey
Golden, M.D.
C/A No.: 2012-CP-26-549
Our File No.: 5412-076

Ruby Walwyn v. Conway Hospital, Inc. d/b/a Conway Hospital Wellness Center
C/A No.: 2010-CP-26-1194
Our File No.: 4961-109

Carol Worrell, as Administratrix of the Estate of Jon C. Worrell v. Grand Strand
Regional Medical Center, LLC, Veronica Ortiz, M.D., Michael C. Overbeck, M.D.,
and Jose W. Convalecer, M.D., and Strand Physician Specialists, P.A. d/b/a Carolina
Health Specialists
C/A No.: 2011-CP-26-1728
Our File No.: 155-382

Georgetown County Case

Allison H. Bazen and Bradley Bazen v. Christine Gerber, M.D. and Carolina
Obstetrics-Gynecology, LLP
C/A No.: 2012-CP-22-232
Our File No.: 5412-075

Letter to The Honorable Steven H. John
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Dear Judge John:

Enclosed please find a proposed Order of Protection from the court for all matters related to the above-captioned case for the following dates in 2012 and 2013:

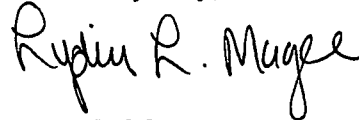
December 10, 2012, through February 22, 2012-Maternity Leave

By copy of this letter to all counsel of record in this case, I am hereby notifying them of my request and ask that they advise the Court and me if they object to the Order no later than September 21, 2012. My law partners Marian Scalise and Doug Baxter will be covering these cases while I am on maternity leave.

If this Order meets with your approval, I would appreciate your signing the enclosed Order of Protection and returning it to me in the enclosed envelope.

If you have any questions or concerns, please let me know. I appreciate your consideration.

Yours very truly,



Lydia L. Magee

LLM/baz

Enclosure

cc: (via email only)

Charles J. Hodge, Esquire
Gene Connell, Esquire
O. Fayrell Furr, Jr., Esquire
John B. McCutcheon, Jr., Esquire
Darren Kent Sanders, Esquire
Weldon Johnson, Esquire
David Yarborough, Esquire
D. Nathan Hughey, Esquire
Andrew D. Gowdown, Esquire
William W. Doar, Esquire

James A. Merritt, Jr., Esquire
John Felder, Esquire
Sam Arthur, Esquire
William Diggs, Esquire
Chad McGowan, Esquire
Stuart Snow, Esquire
Karolan Ohanesian, Esquire
G. Murrell Smith, Jr., Esquire
Saunders M. Bridges, Jr., Esquire