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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

In Re: John W. Gardner, The Gardner Law Firm, P.A.,Respondent.

Appellate Case No. 2024-001130

**PETITIONER’S RESPONSE IN OPPOSITION
TO
RESPONDENT’S MOTION TO DISMISS**

This is a matter regarding the unlicensed practice of law. Respondent has moved for dismissal upon the grounds that a Complaint was not filed. However, the Petition for original jurisdiction, including all the requirements of a Complaint, was filed on July 8, 2024. By Order of the South Carolina Supreme Court, and signed by Chief Justice Kittredge, the court held, Petitioner filed a “Petition ... and complaint”¹ Respectfully, Petitioner believes this matter has been adjudicated, causing no prejudice to the Respondent, and Respondent’s motion should be denied.

In accepting the Petition as both Petition and Complaint, the Supreme Court placed substance over form, in effect recognizing the Respondent would suffer no prejudice by recaptioning the document “Petition and Complaint,” *sua sponte*.² Moreover, there is precedent for Petitioner’s approach.³

¹ See Order, dated September 17, 2024, ¶ 1; see *Wooten v. Wooten*, 354 S.C. 242, 250 (S.C. Ct. App. 2003) (citing *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 177 S.E.2d 544 (1970) (holding an unchallenged issue becomes law of the case).

² See *Paschal v. Price*, 380 S.C. 419, 442 (S.C. Ct. App. 2008) (recognizing that courts of this State have refused to elevate form over substance); see e.g., *McDowell v. South Carolina Department of Social Services*, 300 S.C. 24, 27 (S.C. Ct. App. 1989) (holding an improper caption, absent a showing of prejudice, does not merit dismissal).

³ See Appellate Case Number 2018-002263.

As to prejudice, the Petition included all the requirements of a Complaint, as provided by Rule 8, SCRCF, to wit: (1) those facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled.

(1) Original jurisdiction was accepted. Moreover, pursuant to Rule 4(d), SCRCF, Respondent made a voluntary appearance in this matter, having retained learned, licensed South Carolina counsel. Therefore, jurisdiction is proper. (2) Regarding the facts showing Petitioner is entitled to relief, Petitioner craves reference to the Petition, which provides a detailed statement of the facts. Therefore, Respondent is well-aware of the facts giving rise to this action.⁴ (3) Regarding relief, the Petitioner respectfully requested “that the Court inquire into the matter and make whatever determination the Court may deem just and proper.”⁵

For the reasons described above, Respondent’s Motion to Dismiss should be denied.

Respectfully submitted this 24th day of October, 2024, in Bamberg, South Carolina.

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⁴ See Petition [and Complaint], page

⁵ See Petition [and Complaint], page 11, ¶ 1.