

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY AND DARLINGTON  
Circuit Court

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J. Michael Baxley, Circuit Court Judge  
Case No. 07-CP-40-0576

J. Michael Baxley, Circuit Court Judge  
Case No. 40-CP-16-0332

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Ex Parte: Douglas N. Truslow, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

James Anasti, Plaintiff,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee and Richland County Clerk of  
Court, Defendants.

And

Ex Parte: Desa Ballard, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

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

v.

Estate of Hugh S. Thompson, Defendant.

**RECEIVED**

SEP 23 2013

**SC Court of Appeals**

**ORIGINAL**

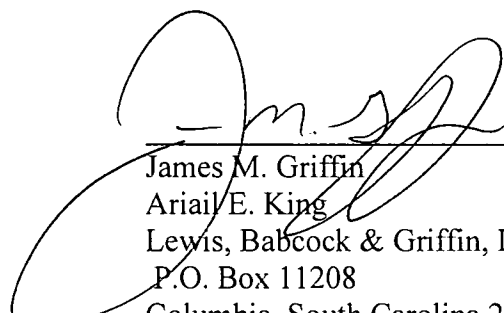
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APPELLANT'S RETURN TO THE MOTION TO STRIKE

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Appellant Tony R. Megna submits this Return in response to the Motion to Strike filed by Respondent Desa Ballard. For the reasons set forth herein, the Motion should be denied.

Respondent argues that the Designation No. 28, Supplemental Memorandum to the Motion to Quash, should be struck because the lower court did not consider the memorandum. Respondent argues that the court did not request the memorandum and the record was closed. However, Rule 210(c), SCACR, only states that the record must not include “matter **not presented** to the lower court or tribunal.” (emphasis added). While the email from Judge Baxley’s law clerk (attached to Respondent’s Motion ) indicated that the memorandum was not requested, there is no question that the memorandum was presented to the judge and provided to opposing counsel. Furthermore, the judge’s law clerk did not state that the memorandum was rejected and did not return the memorandum to Appellant’s trial counsel.<sup>1</sup> The memorandum was presented to the trial court and thus, under Rule 210(c), SCACR, it is a properly designated as part of the record.



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Ariail E. King  
Lewis, Babcock & Griffin, L.L.P.  
P.O. Box 11208  
Columbia, South Carolina 29211  
(803) 771-8000

ATTORNEYS FOR APPELLANT

Columbia, SC

September 23, 2013.

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<sup>1</sup> It has come to light that while Appellant’s counsel, Ms. Zmroczek, apparently intended to file the memorandum, she did not do upon objection by Respondent. However, the memorandum was submitted to the trial judge.

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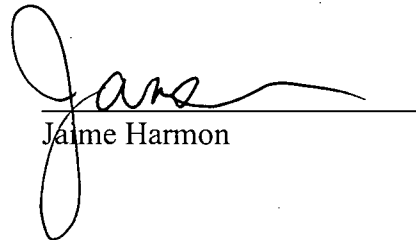
PROOF OF SERVICE

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I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin LLP, attorneys for Tony R. Megna, do hereby certify that I have served a copy of the foregoing **Appellant's Return to the Motion to Strike**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Douglas Truslow  
Truslow & Truslow  
P.O. Box 1465  
Columbia, SC 29202

Desa Ballard  
Ballard Watson Weissenstein  
P.O. Box 6338  
West Columbia, SC 29171



Jaime Harmon

Columbia, South Carolina  
September 23, 2013

A. CAMDEN LEWIS  
KEITH M. BABCOCK  
JAMES M. GRIFFIN  
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MARGARET N. FOX\*

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J. RYAN HEISKELL  
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September 23, 2013

**VIA HAND DELIVERY**

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

**Re: *Ex Parte*: Douglas N. Truslow (Desa Ballard)  
Appellant Case No. 2013-001461**

Dear Ms. Abbott Kitchings:

Enclosed please find the original and nine (9) copies of Appellant's Return to the Motion to Strike in the above-referenced case. Please file these documents and return three (3) clocked copies to this office via our courier.

By copy of this letter and as evidenced on the Proof of Service I am serving counsel of record.

If you have any questions, please do not hesitate to contact this office.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jaime Harmon', is written over a large, stylized circular flourish.

Jaime Harmon  
Assistant to James M. Griffin

/jh  
Enclosures

cc: Douglas Truslow  
Desa Ballard

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SC Court of Appeals