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May 19 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2020-CP-42-00055

Appellate Case No. 2024-001239

Dr. Lad Santiago,

Appellant.

v.

Stephen N. Garcia, as Attorney for

Oscar Avila Hernandez, et.al.,

Respondents.

**APPELLANT'S MOTION AND MEMORANDUM TO ALTER
AND AMEND APPELLANT'S DESIGNATIONS OF MATTER**

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Pro Se for Appellant

Attorney for Respondents

COMES NOW, Appellant, Dr. Lad Santiago, pursuant to Rule 240, *Motion and Petitions Generally*, of the South Carolina Appellate Court Rules, and brings Appellant’s Motion and Memorandum to Alter and Amend Appellant’s Designations of Matter. ¹

INTRODUCTION

On April 24, 2025, this Honorable Court issued the following in their letter: “Dear Counsel and Dr. Santiago: The Court received the appellant's amended designation of matter dated April 15, 2025 and a return dated April 21, 2025. If you wish for the Court to take some action, you must file a motion.” ²

Accordingly, Appellant, Dr. Lad Santiago, hereby moves this Honorable Court to issue an order to permit Appellant to alter and amend his Designation of Matter for his Initial Brief and to include a Designation of Matter for his Reply Brief.

ARGUMENT AND MEMORANDUM

In support of this Motion, Appellant, Dr. Lad Santiago, offers the following.

1. The Appellant previously exercised his right to petition this Honorable Court via his filing of his Motion of February 25, 2025, and his Nunc Pro Tunc of March 3, 2025, in the interest of justice.
2. Appellant Dr. Lad Santiago initiated the above actions for an Amendment of Designation of Matter via *Appellant’s Motion For An Extension of Time To File the Record on Appeal and for Amendment of his Designation of Matter*, filed on February 25, 2025.

¹ Rule 240, Motions and Petitions Generally, South Carolina Appellate Court Rules, <https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-240/>

² Appellate Court Letter of April 24, 2025, <https://ctrack.sccourts.org/public/caseView.do?csIID=81186>

3. However, due to illnesses that were previously noted in his Motion of February 25, 2025, and in his Nunc Pro Tunc of March 3, 2025, the Appellant was precluded from submitting certain items within the Designation of Matter of his Initial Brief and the entire Designation of Matter to his Reply Brief due to an inadvertent clerical omission caused by his feeble condition and severe ongoing illnesses. Please note that the Respondents' Attorney had filed his Initial Brief on February 3, 2025, with the Appellant filing his Reply Brief to the Respondents' Initial Brief on February 19, 2025. It is relevant to state that during this time frame the Appellant was still suffering from severe illness, as previously mentioned above. Accordingly, he requested his Motion of February 25, 2025, and the associated Nunc Pro Tunc of March 3, 2025.^{3 4 5 6}

The present matter at hand conforms to the legal standards and conventions common to matters of this type; where nunc pro tunc is employed in circumstances where there are extraordinary conditions “. . . beyond their control, such as illness or a family emergency. . .” as cited in footnote 3 below, which conditions have occurred in this instance. Therefore, the relief being sought is commensurate with legal standards and conventions presented heretofore.

³ “The applicant or petitioner must demonstrate that the delay in filing was caused by exceptional circumstances beyond their control, such as illness or a family emergency, and the length of the delay is reasonable given the circumstances.” See <https://www.boundless.com/immigration-resources/nunc-pro-tunc-requests-explained/#:~:text=USCIS%20may%20approve%20a%20nunc,is%20reasonable%20given%20the%20circumstances>.

⁴ “The purpose of nunc pro tunc actions is understood as correcting the judicial record to remedy clerical issues, clear errors, or prevent injustice, and in doing so more clearly reflects the original intention of the court. As a result, nunc pro tunc amendments and judgments are treated as if they were made on the dates of the original amendment or judgment.” See https://www.law.cornell.edu/wex/nunc_pro_tunc#:~:text=Nunc%20pro%20tunc%20is%20a,the%20original%20amendment%20or%20judgment.

⁵ “The power to enter a nunc pro tunc order is inherent in courts of justice. This power is necessary in order that the records of a court or other tribunal may be made to speak the truth.” See *Ruby v. Wolf*, 39 Ohio App. 144, 177 N.E. 240 (1931)

⁶ {¶ 22} A nunc pro tunc order “ ‘can be used to supply information which existed but was not recorded, to correct mathematical calculations, and to correct typographical or clerical errors.’ ” *Scaglione* at ¶ 9, quoting *Greulich* at 24, citing *Jacks v. Adamson*, 56 Ohio St. 397, 47 N.E. 48 (1897).
[In re E.G., 2018-Ohio-3800, ¶ 22](#)

However, regardless of the facts mentioned herein that have impaired the Appellant from completing and submitting the Designations of Matter in question, “. . . the Respondents’ Attorney has failed to acknowledge that the Appellant has had extreme illness, which condition has directly impacted the Appellant’s ability to address the Designation[s] of Matter completely; thus, the error of clerical omission. This previous statement, in and of itself, is a showing of good cause”⁷

“In further support and in verification, the Appellant’s letter to the Court of April 15, 2025, states specifically, as follows: ‘In keeping with the Court’s Order of April 8, 2025, the Appellant herein files his Nunc Pro Tunc Designation of Matter that *demonstrates* the matter being designated. Item #s 8, 9, 10, 12, 13, 14, 15, 18, 19, 25 were inadvertently omitted due to clerical error. *These items are in keeping with the Designation of Matter already submitted and do not prejudice the Respondents, but shed necessary light to include and reflect those issues that speak to the truth for justice to prevail in this Honorable Court’s deliberations in this case.*’ (Emphasis added to the last sentence).”⁸

Additionally, “[u]pon examination by the Appellant of the Appellant’s Initial Brief and his Reply Brief, these documents reveal references to the items that the Appellant desires to include in his Designation of Matter for both his Initial Brief and/or his Reply Brief. Also, as previously stated, ‘Item #s 8, 9, 10, 12, 13, 14, 15, 18, 19, 25 were inadvertently omitted because of clerical error due to extraordinary circumstances involving severe illness of the Appellant. *These items are in keeping with the Designation of Matter already submitted and do not prejudice the Respondents, but shed necessary light to include and reflect those issues that speak to the truth for justice to*

⁷ Appellant’s Response to Respondents’ Motion to Strike Appellant’s 2nd Amended Designation of Matter, page 8, #10, filed May 5, 2025.

⁸ Appellant’s Response to Respondents’ Motion to Strike Appellant’s 2nd Amended Designation of Matter, page 3, #4, filed May 5, 2025.

prevail in this Honorable Court's deliberations in this case.' (Emphasis added to the last sentence).⁹ Furthermore, these documents are already in the Circuit Court Record.

There is no item in the proposed amendment for the Designation of Matter for both the Initial Brief and the Reply brief that would reflect Rule 12(f) that would meet the criteria of being “. . . redundant, immaterial, impertinent or scandalous matter,” and therefore, the proposed items should be allowed to be included via amendment as previously proposed.¹⁰

Also, please note the following, as referenced from Appellant's Response to Respondents' Motion to Strike that was filed May 5, 2025, as summarized below:¹¹

- (1) all of the items to be added are already part of the Circuit Court Record,
- (2) several of these items are already a part of the Respondents' Attorney's Designation of Matter,
- (3) these items are already referenced in the Initial Brief and/or the Reply Brief of the Appellant,
- (4) the Appellant was impeded from entering these items in his Designations of Matter previously due to severe illness. To further support this, Appellant has consistently noted that due to his prolonged and extraordinary health conditions that have caused the inadvertent clerical omissions, he was unable to properly complete his Designations of Matter. In support of this, as noted in his filing of March 5, 2025, “. . . due to illnesses that were previously noted in his Motion of February 25, 2025, and in his Nunc Pro Tunc of March 3, 2025, the Appellant inadvertently omitted the Amended Designation of Matter [items] to his Initial Brief, and the Designation of Matter to his Reply Brief,” necessitating this correction. Please note that the

⁹ Appellant's Response to Respondents' Motion to Strike Appellant's 2nd Amended Designation of Matter, page 4, #5, filed May 5, 2025.

¹⁰ Rule 12(f) DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS: Motion to Strike. South Carolina Rules of Civil Procedure (SCRCP), [https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-12/#:~:text=\(f\)%20Motion%20to%20Strike,of%20Rule%2012\(e\).](https://www.sccourts.org/resources/judicial-community/court-rules/civil/rule-12/#:~:text=(f)%20Motion%20to%20Strike,of%20Rule%2012(e).)

¹¹ Appellant's Response to Respondents' Motion to Strike Appellant's 2nd Amended Designation of Matter, page 7, #9, filed May 5, 2025.

Appellant already attempted to submit a Nunc Pro Tunc Amended Designation of Matter, but the Respondents' Attorney objected *without cause*, in a frivolous attempt to defy the credibility of the amendment of Appellant's Designations of Matter.

(5) Furthermore, in addition to the above, the following was and is hereby noted: “. . . since the Respondents' Attorney introduced new issues in his Initial Brief of Respondents that were beyond those issues in the Appellant's Initial Brief, which issues are in dispute, the Appellant needs to add these disputed matters/items within the Appellant's Designation of Matter to the Reply Brief.’ *See: Page 3 of Appellant's Response to Respondents' Attorney's Objection Letter dated February 28, 2025, to Appellant's Motion For Extension Of Time To File The Record On Appeal And For Amendment Of Designation Of Matter.*”

In addition, and in support of this Motion, the Appellant adopts and incorporates all factual statements and legal positions expounded upon in Appellant's filing of May 5, 2025, *Appellant's Response to Respondents' Motion to Strike Appellant's 2nd Designation of Matter.*

Furthermore, the Appellant hereby preserves all of his previous arguments against the Respondents' Motion to Strike and all of those arguments made in favor of the granting of this Motion herein. Nothing in this current Motion negates the Appellant's previous argument to deny the Respondents' Motion to Strike.

CONCLUSION

Pursuant to Rule 240, the following is respectfully requested of this Honorable Court: (1) Amend and file the Designation of Matter for Appellant's Initial Brief; (2) Create and file the Designation of Matter for Appellant's Reply Brief, and (3) Allow the Appellant 15 days to file the aforementioned amended Designations of Matter requested in (1) and (2) above with this

Honorable Court, and that the time required to file the Record on Appeal be extended 30 days from the Designation of Matter due dates, subsequent to the granting of this motion by this Honorable Court. Please refer to *Exhibit A, Proposed Designations of Matter*.

It would be inordinately prejudicial to deny the Appellant the right to amend his Designations of Matter, as it would deny this Honorable Court the proper and complete documents for the appropriate deliberation of all of the issues in this case. Otherwise, not to grant said motion would impede justice.

In the interest of fairness and justice, and in order for the entire case record to be complete and properly documented, the Appellant requests that the Amendment of his Designations of Matter be granted.

WHEREFORE, Appellant prays for an Order from this Honorable Court that will grant the Appellant his Amended Designations of Matter and extensions of time as requested, and will deny the Respondents' Attorney's Motion to Strike, and for any further relief that the Court deems just and proper.

Respectfully submitted,

/s/Dr. Lad Santiago

Dr. Lad Santiago
5041 North Blackstock Road
Spartanburg, South Carolina 29303
(864) 576-2983
Pro Se for Appellant

Dated: May 19, 2025

- EXHIBIT A -
PROPOSED DESIGNATIONS OF MATTER

As noted in the *Appellant's Designation of Matter to be Included in the Record on Appeal Nunc Pro Tunc* filing of April 15, 2025: "This Nunc Pro Tunc filing of Appellant's Designation of Matter is directly attributable to Appellant's chronic and ongoing illnesses that have resulted in the clerical error of inadvertently omitting these additional Designation of Matter items from the initial filings."

As further noted, following are the Designation of Matter items to be included for the Initial Brief and for the Reply Brief, as previously requested within this Motion document. Item #s 8, 9, 10, 12, 13, 14, 15, 18, 19, 25 were inadvertently omitted due to clerical error due to extraordinary illnesses of the Appellant.

Additionally, as earlier noted, ". . . since the Respondents' Attorney introduced new issues in his Initial Brief of Respondents that were beyond those issues in the Appellant's Initial Brief, which issues are in dispute, the Appellant needs to add these disputed matters/items within the Appellant's Designation of Matter to the Reply Brief."

Appellant proposes the following be included in the Record on Appeal for his Designations of Matter for his Initial Brief and for his Reply Brief:

1. Summons and Complaint filed January 8, 2020 and all Exhibits:
 - a. Informed Consents
 - b. Assignment of Benefits
 - c. Invoices
 - d. Certified Letter – April 10, 2019
 - e. Certified Letter – May 9, 2019 and all component parts
2. Defendants' 12(b)(6) Motion to Dismiss of February 26, 2020
3. First Amended Verified Complaint of March 9, 2020
4. Plaintiff's Motion to Disqualify Opposing Counsel and Exhibits of March 9, 2020
5. Plaintiff's Response in Oppos. To Stephen N. Garcia's Motion to Dismiss of March 9, 2020
6. Defendants' Memorandum of Law in Support of Defendants' 12(b)(6) Motion to Dismiss of May 6, 2020
7. Affidavits of Dr. Lad Santiago and Dr. Elizabeth Hughston Santiago of May 29, 2020, and May 22, 2023

8. Plaintiff's Response in Opposition to Stephen N. Garcia's Amended Motion to Dismiss of May 29, 2020
9. Court Hearing transcript of Judge DeBerry of May 22, 2022
10. Court Order from Judge DeBerry of October 4 2022
11. Plaintiff's Response in Opposition to Defendants' Renewed 12(b)(6) Motion to Dismiss filed May 22, 2023
12. Court Hearing transcript before Judge Grace Gilchrist Knie of June 2, 2023
13. Court Order from Judge Grace Gilchrist Knie of June 15, 2023
14. Court Hearing transcript before Judge Mark Hayes of July 19, 2023
15. Court Order from Judge Mark Hayes of July 22, 2023
16. Emails: Defendants' attorney
17. Emails: Clerk of Judge Cole
18. Objection to Granting Defendants' 12(b)(6) Motion to Dismiss of Sept 19, 2023
19. Letter to Judge J. Derham Cole of September 25, 2023
20. Order of November 20, 2023
21. Plaintiff's Motion for New Trial of November 30, 2023
22. Plaintiff's Response to Defendants Memorandum In Opposition to New Trial of Dec 15, 2023
23. Nunc Pro Tunc for Plaintiff's Response to Def Mem in Oppos to New Trial of Dec 29, 2023
24. Final Order of July 3, 2024
25. Notice of Appeal filed August 6, 2024

I certify that this designation of matter contains no matter which is irrelevant to this appeal.

May 19th, 2025

/s/ Dr. Lad Santiago

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drladsantiago@gmail.com
Pro Se for Appellant

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May 19 2025

**PROOF OF SERVICE OF
APPELLANT'S MOTION AND MEMORANDUM TO ALTER
AND AMEND APPELLANT'S DESIGNATIONS OF MATTER**

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

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APPEAL FROM SPARTANBURG COUNTY

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Dr. Lad Santiago,

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v.

Stephen N. Garcia, as Attorney for
Oscar Avila Hernandez, et.al.,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of May, 2025, he served counsel for the Defendants with a copy of the Appellant's Motion and Memorandum to Alter and Amend Appellant's Designations of Matter in this case by mailing a copy of the same by the United States Mail with postage prepaid to the following address:

Stephen N. Garcia, Esquire
604 Pettigru Street
Greenville, South Carolina 29601

**LETTER TO THE APPELLATE COURT CLERK FILING NOTICE
APPELLANT'S MOTION AND MEMORANDUM TO ALTER
AND AMEND APPELLANT'S DESIGNATIONS OF MATTER**

Dr. Lad Santiago
5041 North Blackstock Road
Spartanburg, South Carolina 29303

May 19, 2025

The Honorable Jenny Abbott Kitchings Clerk,
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Dr. Lad Santiago, Appellant v. Oscar Avila Hernandez, et.al., Respondents
Appellate Case No. 2024-001239

Dear Ms. Kitchings:

Attached for filing is Appellant's Motion and Memorandum to Alter and Amend Appellant's Designations of Matter, accompanied by a Certificate of Service to the Respondents' Attorney.

Also being mailed separately are the following:

- (1) Proof of service of Appellant's Motion and Memorandum to Alter and Amend Appellant's Designations of Matter on the Respondents.
- (2) Filing fee of \$50.00 mailed to the Court.

Please confirm receipt. Thank you.

Sincerely,

/s/ Dr. Lad Santiago

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Pro Se for Appellant

cc: Stephen N. Garcia, Esquire
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Greenville, South Carolina 29601
Attorney for Respondents

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