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**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

Appellate Case No. 2025-001313

**Scott R. Manna**,  
Appellant,

v.

**Jack Sinclair, Esq.**,  
Respondent.

## **APPELLANT'S REPLY BRIEF**

Appeal From Charleston County  
The Honorable George M. McFaddin, Jr.  
Circuit Court Judge

**Scott R. Manna**  
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## APPELLANT'S REPLY BRIEF

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### I. INTRODUCTION

Respondent's Brief attempts to reframe this case as one involving a straightforward application of legal malpractice requirements. That framing misses the central issue on appeal.

This appeal does not turn on whether an expert affidavit was ultimately required or whether Respondent will ultimately prevail on the merits. Instead, the dispositive question is whether the circuit court erred by **terminating the case at the pleading stage and denying Appellant any opportunity to cure a conceded procedural defect**, despite Appellant's express request to do so and subsequent submission of a compliant affidavit.

Respondent's arguments fail to address this fundamental error.

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### II. THE TRIAL COURT'S DENIAL OF LEAVE TO AMEND IS THE CENTRAL REVERSIBLE ERROR

Respondent largely ignores the dispositive issue: the trial court's refusal to permit amendment under Rule 15(a), SCRPC.

Even assuming arguendo that S.C. Code Ann. § 15-36-100 required a contemporaneous affidavit, dismissal with prejudice was improper where:

- The case was at the **earliest pleading stage**;
- **No discovery** had occurred;
- **No prejudice** to Respondent was identified;
- Appellant expressly requested leave to cure; and
- **A compliant expert affidavit was promptly submitted with the Rule 59(e) motion.**

South Carolina law is clear that leave to amend “shall be freely given when justice so requires.” Rule 15(a), SCRPC. The Supreme Court has emphasized a strong preference for resolving cases on the merits rather than technical defects. *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 537, 726 S.E.2d 748 (2012).

The trial court's decision to deny amendment and terminate the case entirely—despite the defect being curable—constitutes an abuse of discretion requiring reversal.

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### III. RESPONDENT MISCHARACTERIZES THE NATURE OF THE CLAIM

Respondent's Brief, like the trial court's order, incorrectly frames this case as involving a “guardian” relationship and a parental disagreement.

This is incorrect.

Respondent was **court-appointed legal counsel**, not a guardian. The Complaint alleges failures in legal representation, including failure to advocate for the client's expressed wishes, failure to investigate, and failure to pursue available legal remedies.

By mischaracterizing Respondent's role, both Respondent and the trial court applied an incorrect legal framework, which directly impacted the court's analysis of duty and dismissal.

This error further supports reversal.

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#### **IV. THE TRIAL COURT IMPROPERLY RESOLVED DUTY AT THE PLEADING STAGE**

Respondent defends the trial court's categorical conclusion that no duty existed as a matter of law.

However, whether an attorney's conduct gives rise to liability to a non-client under circumstances involving **foreseeable and direct harm** is a fact-intensive inquiry not suitable for resolution under Rule 12(b)(6).

South Carolina recognizes that attorneys may owe duties to non-clients where harm is the direct and foreseeable result of the attorney's conduct. See *Fabian v. Lindsay*, 410 S.C. 475, 765 S.E.2d 132 (2014); *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006).

At a minimum, Appellant's allegations were sufficient to survive dismissal and proceed to discovery.

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#### **V. EVEN IF AN AFFIDAVIT WAS REQUIRED, DISMISSAL WAS IMPROPER**

Respondent's reliance on § 15-36-100 does not resolve this appeal.

Appellant acknowledges the trial court's determination that the statute applies. However, the statute does not mandate dismissal with prejudice where:

- The defect is curable;
- The plaintiff seeks to cure; and
- No prejudice results.

Rigid application of the statute in this manner eliminates the discretion afforded under Rule 15(a) and conflicts with South Carolina's strong policy favoring decisions on the merits.

The trial court's refusal to allow amendment—after Appellant explicitly requested it and provided the required affidavit—elevated form over substance and resulted in manifest injustice.

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## VI. CONCLUSION

This case was dismissed at the earliest possible stage based on a curable procedural defect, coupled with a premature legal determination on duty and a mischaracterization of the underlying claim.

Under these circumstances, South Carolina law requires that Appellant be afforded the opportunity to proceed on the merits.

For these reasons, Appellant respectfully requests that this Court:

1. **Reverse** the circuit court's dismissal;
2. **Vacate** the order denying amendment; and
3. **Remand** the case for further proceedings.

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Respectfully submitted,



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