

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge
Civil Action: 2007-CP-40-0576

J. Michael Baxley, Circuit Court Judge
Civil Action: 2010-CP-16-0332

Case Number: 2013-001461

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.

INITIAL BRIEF OF RESPONDENT DOUGLAS N. TRUSLOW

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Ex Parte Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. Whether Appellant Megna was entitled to repeatedly disobey the lower court's orders disqualifying him on the ground that he had filed a motion to reconsider. (Appellant's Argument #1)
- II. Whether the lower court erred in finding and concluding that Respondent Anasti's March 9, 2012 motion to quash was not previously decided by the Court of Appeals. (Appellant's Argument #2)
- III. Whether the March 9, 2012 motion to quash before Judge Baxley on May 15, 2012 was the same as the motion for sanctions (against Appellant) filed November 7, 2007. (Appellant's Argument #3)
- IV. Whether Appellant was entitled to misuse the discovery process in violation of the terms of his disqualification, with no client, in violation of the bankruptcy court's orders and with no authority. (Appellant's Argument #4)
- V. Whether sanctions may be issued by a court under appropriate circumstances. (Appellant's Argument #5)
- VI. Did evidence exist reflecting that Appellant Megna misused the "discovery process". (Appellant's Argument #6)
- VII. Whether Appellant Megna acted in "good faith".

STATEMENT OF THE CASE

Appellant Tony R. Megna (“Megna”) has filed two separate appeals relative to sanctions imposed upon him in two separate, distinct cases originating in two separate and distinct counties. One case (“Anasti”) was in Richland County. (R. Caption) The other case (“Thompson”) was in Darlington County.¹ (R. Caption) The cases were distinct and involved no common questions of law or fact. The attorneys involved were separate and distinct. The common denominator in these cases has been Megna, as he has conceded. (R –Synopsis at page 9 of 14)

From the time of his initial appearance in Anasti, until his representation ended with the conclusive loss of her appeal, Megna was the attorney for Defendant Gina Lee (hereinafter “Lee”).²

In Thompson, Megna was disqualified to act as attorney for Pee Dee Health Care (“PDHC”).³ (R. order 4-15-2011). The terms of disqualification were repeated thereafter.

¹ Thompson has never been in Florence County, despite Megna’s assertions to the contrary in his brief. However, Megna has been involved in multiple, unrelated cases in Florence County. He filed an appeal from the dismissal of one Florence case wherein he had sued attorneys Celeste Jones, LeRoy Nettles, the McNair Law Firm, et al. That appeal was dismissed in that Megna did not timely pursue it, even after multiple extensions. (R. see Court of Appeals Orders dated June 6, 2013 and September 11, 2013)

² Lee, represented by Megna, lost at summary judgment and then appealed. The appeal was remanded for a determination of Megna’s timeliness. Upon the appeal being twice determined on remand to have been untimely, Megna continued to appeal and then filed for bankruptcy, ostensibly on Lee’s behalf. The appeal Megna had filed was thus stayed. Thereafter, over Megna/Lee’s objection, the Bankruptcy Court lifted the bankruptcy stay so that Lee’s appeal was required to be abandoned or pursued. The Bankruptcy Court limited the scope of Megna’s representation of Lee in Anasti to concluding her appeal. Megna was not authorized to charge Lee for the State appeals he was pursuing. (R. ROA in Anasti, pages 5-7, 13-20, Bankruptcy Court orders of November 9, 2009, December 21, 2009 and January 15, 2010) Megna’s representation of Lee in Anasti ended with his loss of all Lee’s State appeals. Further, Lee averred in her 2012 affidavit that upon the loss of all her State appeals Megna no longer represented her, was not acting for her in Anasti, was not acting with her permission or at her request. (R. Affidavit of Lee)

³ Megna has been the author of at least six prior appeals in these two cases, plus multiple bankruptcy appeals, plus being either and/or both a party and acting as the attorney in numerous unrelated cases in Florence County as well as in a Federal case involving PDHC. (PDHC v. Governor Sanford, et al., Fourth Circuit Court of Appeals)

As a result of separate motions in Anasti and Thompson relative to alleged attorney misconduct by Megna (a) in Anasti after his representation of Lee had ended and (b) in Thompson after to his disqualification, a consolidated Anasti/Thompson sanctions hearing was held by the Circuit Court on May 15, 2012. Sanctions orders were rendered against Megna in each case on February 11, 2013 (R. orders filed February 13, 2012) In Anasti, a monetary sanction in the sum of \$31,842.39 was rendered against Megna. Megna was also ordered to report to the Office of Disciplinary Counsel. In Thompson, monetary sanctions were independently rendered against Megna. Megna was again ordered to report to the Office of Disciplinary Counsel. Megna filed motions to alter or amend the two sanctions orders issued against him. Each motion was denied on June 12, 2013. (R. orders) Megna has appealed the two sanctions orders against him. Megna's appeals of the two sanctions orders were consolidated by the Court of Appeals on July 10, 2013, with each of Respondents filing separate briefs.

To the degree allowed, Respondent herein incorporates by reference the Statement of the Case and arguments set forth by Ms. Ballard.

ANASTI CASE/RICHLAND

Anasti is a case in which Plaintiff James Anasti brought suit against Lee, Wilson and Goodwin and the Richland County Clerk of Court.⁴ The action involved disputed ownership of real estate and claims of damages. (R. Complaint) Megna filed an answer and counterclaim on Lee's behalf asserting, *inter alia*, that despite selling Plaintiff's property to Wilson and Goodwin, she still owned it [sic]. (R. Answer and Counterclaim)

⁴ The Clerk of Court was merely a stakeholder of certain funds paid into the court relating to a SCDOT condemnation action. The Clerk of Court has paid those funds to Plaintiff Anasti and has no further interest. Wilson and Goodwin have settled their differences with Plaintiff Anasti and likewise have no interest in this appeal.

Wilson and Goodwin alleged that they had in good faith bought the property from Lee by way of "owner financing", believing her at the time to be the owner, but that when they later learned that Lee did not in fact own the property she had sold to them, they sued her. (R. Answer) They further asserted in their answer that a decision favorable to Plaintiff would bolster their fraud and other claims against Lee in a separate, previously filed lawsuit they had initiated against Lee for selling them the property they subsequently discovered she did not own. (R. Complaint in action 2004-CP-40-5333 "companion case") Wilson and Goodwin remained on the property to Lee's exclusion through the time Megna/Lee's petition for writ of certiorari was denied in October, 2011.

On October 26, 2007, and over Lee's opposition, the Circuit Court granted Plaintiff Anasti summary judgment against Lee, Wilson and Goodwin as to his ownership of the real estate at issue ie. declaring Plaintiff to be the sole owner. The summary judgment order contained a provision directing that a damages hearing against Lee, Wilson and Goodwin was to follow at a subsequent date. Throughout the discovery process and at the summary judgment hearing, Wilson and Goodwin did not contest that Plaintiff was the true owner of the real estate in question. Only Lee contested it. The summary judgment order was filed on October 29, 2007 and then duly transmitted to respective counsel. (R. ROA in Anasti vol. 1, pages 277 - 279)

On November 7, 2007, within ten days of receipt of the summary judgment order, Plaintiff filed a Rule 11, SCRCP, motion for sanctions against Megna. (R. ROA in Anasti, pages 281-282)

On November 21, 2007, Megna filed a motion for reconsideration of the summary judgment order, *to wit*: a motion pursuant to SCRCP 59(e). Megna did not allege late

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receipt of the order granting summary judgment. Megna's Rule 59(e) motion was denied on December 6, 2007. At the time of denial, the Circuit Court questioned Megna's timeliness.

Plaintiff's Rule 11 motion and other motion for sanctions against Lee and Megna was scheduled to be heard on January 8, 2008. (R. ROA in Anasti, page 294)

On January 4, 2008, and purporting to act on behalf of Lee, Megna filed a notice of intent to appeal the grant of summary judgment to Plaintiff. (R. ROA in Anasti, page 249) In conjunction, Megna asserted that neither the Rule 11 sanctions hearing nor the damages hearing could be conducted while the appeal remained outstanding. (R. Megna's letter to the Circuit Court and Transcript)

By order dated January 8, 2008, both the Rule 11 sanctions hearing and the damages hearing were stayed during the pendency of Lee's appeal. (R. ROA in Anasti, vol. 1, page 56) The Circuit Court reiterated on May 28, 2008 that Plaintiff Anasti's motion for sanctions remained stayed while the case was pending on appeal. (R. ROA in Anasti, vol. 1, page 55)

On January 22, 2008, Plaintiff (Respondent on appeal) moved for dismissal of Megna/Lee's appeal as untimely and hence jurisdictionally defective. (R. ROA in Anasti, vol. 1, pages 265-275) Megna admitted he had received the court's order. He contested that he had been untimely. Each side submitted evidence and memoranda supporting their respective assertions.

The issue of timeliness of the appeal filed by Megna on Lee's behalf was remanded to the Court of Common Pleas (hereinafter "Circuit Court") on March 18, 2008, with an indication that it should be heard as soon as possible.

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The remand hearing was duly set and then conducted by the Circuit Court on April 3, 2008. Megna did not appear and could not be accounted for. Nonetheless, the Circuit Court considered the entire file, including the Clerk's file reflecting on the mailing of the order in question. Megna's affidavits and all other documents, memoranda and arguments Megna had submitted were and/or relied upon. After a thorough review, Circuit Court determined that Megna was untimely in filing the appeal. The Circuit Court further found that Megna had been untruthful, had made gross misrepresentations to the courts as to the issues and that he had unjustly attacked opposing counsel. (R. order dated April 3, 2008)

Upon the Circuit Court's April 3, 2008 order being filed, the Court of Appeals, dismissed the appeal. Thereafter, Megna alleged that he had not received proper notice for the remand hearing; he sought to reopen Lee's appeal and have the Circuit Court's April 3, 2008 order reconsidered. The Court of Appeals provided Megna with yet another opportunity to make whatever timeliness arguments he might wish to make; Lee's appeal was reinstated, and then remanded to the Circuit Court once again for a second determination of timeliness. A second hearing was thereafter held relative to the issue of Megna's timeliness in perfecting Lee's appeal. The Circuit Court again found and concluded in its order dated April 1, 2009 that Megna's appeal was untimely. (R. order dated April 1, 2009) In conjunction, Megna was once again found by the court to be untruthful. Megna's excuses for failure to attend the April 3, 2008 hearing were found by the court to have been contrived.

In response to the Circuit Court's April 1, 2009 order, Megna/Lee filed another appeal on April 15, 2009 (actually two of them – relating to the Circuit Court's two

remand orders dated April 3, 2008 and April 1, 2009 -- finding Megna to have been untimely in filing Lee's appeal). (R. ROA in Anasti, pages 104-107)

On April 16, 2009, Megna/his law partner Benjamin Matthews ("Matthews") filed a debtor bankruptcy action, ostensibly on Lee's behalf.⁵ Megna did not timely communicate that event (bankruptcy filing) to the Court of Appeals. Lee's appeal was once again dismissed as untimely, based on the filing of the Circuit Court's April 1, 2009 second remand order, determining that Megna had been untimely in filing Lee's appeal.

The legal effect of Lee's debtor bankruptcy filing was that the second dismissal of Lee's appeal(s) had to be set aside and then held in a state of abeyance because it had been subjected to what is commonly known as a Title 11 United States Code "§362" stay, retroactive to the date of Lee's bankruptcy filing. Thus, the dismissal of the appeal, as well as the sanctions motion against Megna, was further delayed.

Represented by attorney Steven Licata solely for bankruptcy purposes, Plaintiff petitioned the Bankruptcy Court to lift the bankruptcy stay, so that Lee's/Megna's State appeal(s) could be concluded. Over Lee's/Megna's/Matthews' objections, Plaintiff's petition to lift the bankruptcy stay was granted on November 9, 2009. (R. Bankruptcy Court order) Under the terms of the Bankruptcy Court's order(s), Megna was not authorized to proceed further on Lee's behalf in Anasti, other than to conclude her State appeal(s). (R. Bankruptcy Court orders)

On February 24, 2010 Megna/Matthews wrote a letter and also sent three emails to the Bankruptcy Court, Lee's Bankruptcy Trustee, attorneys and others, representing

⁵ Megna and Matthews represented Lee throughout all her bankruptcy proceedings (see bankruptcy action 09-02854-JW; readily available on PACER). The word "ostensibly" is used in that the effect of Lee's multiple appeals, multiple bankruptcy filings and multiple bankruptcy appeals was to delay now for years the resolution of the November 7, 2007 sanctions motion against Megna.

that the two remand orders of the Circuit Court (Judge Manning - dated April 3, 2008 and April 1, 2009 -- finding and concluding that Megna had been untimely in filing Lee's appeal) had been disregarded, set aside, reversed, and vacated by the Court of Appeals. (R. February 24, 2010 letter to Keenan Stephenson, both emails of Megna dated 2-24-2010, and email of Megna dated 3-8-2010) Megna/Matthews' claims were not true.

Lee was determined to be bankrupt and her plan approved on or about April 16, 2010.

Upon it being established that the bankruptcy stay relative to Lee/Megna's appeals in Anasti had in fact been been lifted (R. order 2-19-2010 at ROA in Anasti, pages 9-11), the South Carolina Court of Appeals directed that both the record on appeal and briefs were to be limited to the threshold, jurisdictional issue of timeliness of Lee's appeal(s). (R. ROA in Anasti, pages 3-4 dated August 24, 2010) After considerable legal wrangling, briefs were ultimately submitted. Upon receipt of the final briefs in mid March, 2011, the Court of Appeals dismissed Lee's appeal(s) on April 1, 2011. (R. order dismissing appeal) The appeal was dismissed on the basis of Megna's untimeliness as a threshold matter. The merits were never addressed. Plaintiff/Respondent Anasti then submitted a claim for Rule 269, SCACR sanctions, limited to the time expended during the appeal only. The Court of Appeals did not grant relief under Rule 269.⁶

⁶ While no reason was given, lack of jurisdiction is the logical conclusion. It would otherwise be difficult to imagine that the Court of Appeals would have approved of Megna's misconduct, given the record before it of repeated findings of his gross misrepresentations to the courts, coupled with another Circuit Court's observation that Lee's defense presented by Megna was a "flim-flam" (R. Summary Judgment transcript), that "You [Megna] are talking out of four sides [of your mouth] to me" (R. Summary Judgment transcript) and the separate conclusions of the Bankruptcy Court and the District Court in their orders -- a tortured history of legal machinations by Megna to avoid the consequences associated with his failure to timely appeal. (See especially the order dated January 15, 2010) Further, the thrust of Respondent's brief was that there was no jurisdiction for Lee's/Megna's appeal as a threshold matter.

From the loss of Lee's appeal, Lee/Megna filed a petition for writ of certiorari in the State Supreme Court. Lee/Megna's petition was denied. Given Lee's bankruptcy, in conjunction with the Bankruptcy Court's orders and Lee's loss of all appeals, Lee has had no further interest in Anasti since that time.

Anasti was directed to be remitted to the Circuit Court on or about October 7, 2011. At that point, the Rule 11 motion for sanctions against Megna filed November 7, 2007 was ripe for resolution.⁷ As well, the damages hearing against Wilson and Goodwin was then ripe for resolution. Lee was eliminated in light of her bankruptcy.

On November 1, 2011 Plaintiff requested of the Circuit Court a status conference so that the outstanding damages hearing (not involving Megna or Lee) and the outstanding Rule 11 sanctions motion (against Megna) could be scheduled. (R. letter) Megna submitted a letter (with attachments) to the Circuit Court on November 3, 2011 opposing any status conference. Megna asserted that: (a) all matters in Anasti remained stayed by virtue of Lee's bankruptcy, (b) Plaintiff had lost the case in the Court of Appeals, (c) the Court of Appeals had ruled adversely to Plaintiff relative to his damages claims, as well as the November 7, 2007 motion for Rule 11 sanctions, and (d) there was nothing left for resolution [sic].

A status conference was held by the Circuit Court on January 18, 2012. (R. Transcript) At that time, it was reconfirmed that neither damages nor sanctions were being pursued against Lee, given her bankruptcy. (R. Transcript, pages 5 - 8) The court stated that Plaintiff's damages hearing (involving Plaintiff and Defendants Wilson and Goodwin alone) would be heard, most likely in mid-March, 2012 and that Plaintiff's Rule

⁷ Given that Lee was no longer involved, Plaintiff moved to delete Lee from the Rule 11 sanctions motion, and reiterated an intent to proceed against Megna (see Motion).

11 sanctions motion against Megna was expected to be heard thereafter. At the status conference, Megna confirmed to the court that neither he nor Lee were involved or interested in the damages hearing. (R. Transcript, pages 6-8) Wilson and Goodwin did not express a desire or need for any further discovery.⁸ Wilson and Goodwin's attorney alerted the Circuit Court at that time that he was ill and may be unable to participate in the damages hearing.

Plaintiff's damages hearing was thereafter scheduled to be heard on March 12, 2012. In late February, 2012, Megna discovered that Wilson and Goodwin's attorney (Mr. Earle) was hospitalized, in a coma and would have to withdraw from legal representation of them. (R. Megna's email of February 27, 2012) On or about February 27, 2012, Mr. Earle's law partner sought and received authority for Mr. Earle and his law firm to be relieved from the representation of Wilson and Goodwin. Wilson and Goodwin were given until the end of March, 2012 to engage substitute counsel. (R. orders of relief in Anasti and in actions numbered 5333 and 5334. The damages hearing was continued.)⁹ By that point, Wilson and Goodwin had received an award against Lee in excess of \$216,000 in their lawsuit heretofore characterized as the "companion cases". (R. award at ROA in Anasti, pages 57-76) Megna represented Lee in that case.

In the order continuing the damages hearing, and with Megna's concurrence, it provided that "Megna is not involved nor is his client in this aspect of the case". (R. order and Megna's email)

⁸ Megna had filed a motion on September 11, 2007 asserting that all discovery was complete and that both he and Lee were unwilling to engage in it further. (R. letter of 9-11-2007 and motion of the same date)

⁹ Subsequently, Wilson and Goodwin engaged substitute counsel and thereafter confessed judgment in favor of Plaintiff as to damages.

Upon being informed that Wilson and Goodwin's counsel, Mr. Earle, was in a coma and would not be able to participate in the damages hearing, Megna sent emails, letters, subpoenas and subpoenas duces tecum, interrogatories, requests to produce, and notices for depositions to Plaintiff's counsel and to Mr. Earle. Megna asserted that he was doing so for the damages hearing (R. Megna's email of February 28, 2012) and purporting to be doing so on Lee's behalf and independently for Plaintiff [sic]. On February 28, 2012 and continuing in March, 2012, Megna served subpoenas and other discovery on various persons. (R. discovery requests and subpoenas) Megna's subpoenas were initially from Darlington County, but later reissued by him from Richland County. Megna sought to depose the bankruptcy attorney (Mr. Licata), Plaintiff's counsel (Respondent), Respondent's paralegal, and to retake the deposition of Plaintiff. Megna noticed the depositions to be taken at the exact same time on less than ten days notice.¹⁰ Megna's subpoenas were subpoenas duces tecum. He sought information relative to PDHC, the Thompson Defendant's attorneys and the Thompson case – in which he had previously been disqualified as attorney for PDHC. As well, Megna attempted to serve discovery on Wilson and Goodwin and require compliance while they were without counsel and otherwise protected. In his various discovery submissions under the auspices of Anasti, Megna sought information relative to Mr. James, Mr. Josey, Ms. Jones, Kenneth Woodington and Desa Ballard, PDHC, Medicare and Medicaid records, matters regarding unrelated cases in Federal court and matters involving Megna and/or PDHC in other jurisdictions and venues, including Thompson. Megna threatened that, if the discovery he claimed to be seeking for the damages hearing

¹⁰ At that time, Megna asserted that Plaintiff lived out of the country, but Megna sought to retake his deposition on less than ten days notice nonetheless and without seeking consent or court approval to retake it.

against Wilson and Goodwin was not forthcoming, he would file for contempt sanctions against Anasti's counsel. (R. email dated March 5, 2012)

On March 9, 2012, Plaintiff Anasti/Plaintiff's counsel/Respondent herein filed a motion to quash and for protection. (R. motion and all attachments) In conjunction, sanctions were sought against Megna. At that point, Ms. Ballard had requested that her pending sanctions motion against Megna filed in Thompson, addressed *infra* and by Ms. Ballard separately, also be heard. Upon notice that the court was prepared to set a consolidated hearing date on May 15, 2011 as to Plaintiff's March 9, 2012 motion in conjunction with Ms. Ballard's outstanding motion against Megna in Thompson (R. court's notice), Megna emailed the court an unsolicited letter and "Synopsis" on March 19, 2012. (R. letter and Synopsis) In his Synopsis, Megna asserted that a) the Court of Appeals had previously both addressed and denied Respondent's March 9, 2012 motion in Anasti, b) there had been no discovery as to damages in Anasti and that he needed it; and c) that he (Megna) was acting on behalf of the "unrepresented Defendants" (Wilson and Goodwin) as to the pending damages hearing in Anasti. In addition in his Synopsis, Megna leveled claims of unethical conduct on the part of a number of attorneys, spanning different cases.¹¹ Although remaining disqualified, Megna moved in his Synopsis that the court disqualify Defendant's counsel (Mr. Josey and his law firm) in Thompson.

In support of his March 9, 2012 motion and to refute Megna's Synopsis, Respondent filed, served, requested judicial notice and made a part of the record comprehensive evidence reflecting on the issues to be addressed at the May 15, 2012

¹¹ Megna had previously submitted a reply to the State Supreme Court in Anasti indicating that opposing counsel and others were "engaged in inappropriate behavior that is the subject of pending subpoenas and motions for enforcement of the subpoenas in another action pending before the Darlington County Court of Common Pleas". The case referred to was Thompson. The subpoenas and other actions Megna referred to were those done by Megna **subsequent** to his disqualification.

scheduled hearing. (R. Memorandum and Exhibits A-C and subparts) It included: Respondent's affidavit with detailed time records (R. Affidavits); the affidavit of Lee stating that Megna was not representing her or acting on her behalf (R. Affidavits); an affidavit of a legal assistant in Respondent's attorney's office in which time expended by Plaintiff's counsel had been verified (R. Affidavits); an affidavit of Plaintiff Anasti; an affidavit of Ms. Ballard verifying that the fees sought by Plaintiff's counsel were appropriate (R. Affidavits); detailed memoranda (R. Memorandum), billing records submitted relative to a Rule 269 motion. As well, Respondent asked that the court take judicial notice of the Clerk of Court's files in Anasti (and its appeal), the Darlington case (Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, 2010-CP-16-0332 (Thompson)) and any relevant appeal(s); the "Florence cases" (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706); Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); the "companion case(s)"; and Lee's bankruptcy case (and appeals).

The March 9, 2012 motion came to be heard on May 15, 2012. In conjunction with his "Synopsis", Megna submitted a memorandum at the hearing. (R. Memorandum)¹² In that memorandum, in an email to the court by Megna's counsel (R. Zmroczek email of May 14, 2012) and at the hearing, the contentions argued by Megna as to why Respondent's March 9, 2012 motion should not be granted were that a) Respondent did not submit an affidavit as to damages and b) that the Court of Appeals

¹² The memorandum referenced a motion filed by Megna, but no such motion has ever been filed or served on either Respondent.

had previously addressed the March 9, 2012 motion and had ruled adverse to Anasti [sic].^{13 14} Megna submitted no affidavits.

THOMPSON CASE/DARLINGTON

Thompson was filed in Darlington County by Megna on behalf of Plaintiff Pee Dee Healthcare (“PDHC”) against the Estate of Thompson. Megna was at all pertinent times CEO of PDHC, and he held himself out as its attorney as well. PDHC was suing the estate of one of its deceased employees for money damages. The case had at its core Medicare and/or Medicaid issues. (R. Complaint and order of summary judgment) Thompson had been commenced by Megna in Probate Court. Upon denial of PDHC’s claims, PDHC appealed to the Circuit Court. Estate of Thompson asserted, *inter alia*, that a) the appeal Megna filed on PDHC’s behalf to the Circuit Court was untimely, and b) an administrative law court decision had previously and dispositively concluded that PDHC’s claim was without merit. Estate of Thompson’s counsel were John “Jay” James and J. Rene Josey. Mr. Josey is a partner in Turner Padgett Law Firm.

Estate of Thompson filed a motion to disqualify Megna from representing PDHC on or about January 28, 2011. (R. motion) Megna filed a response on March 11, 2011. (R. Response) A hearing on the motion to disqualify Megna was held on March 16, 2011. The court ruled that Megna was disqualified, with a formal order to follow. (R. Transcript)

Megna was disqualified to act as an attorney for PDHC in Thompson by order dated April 15, 2011. (R. order) Megna filed a motion to reconsider on May 2, 2011. (R.

¹³ Neither a damages hearing (against Wilson and Goodwin alone), nor the November 7, 2007 motion for sanctions was before Judge Baxley. Likewise, the March 9, 2012 motion had obviously never been before the Court of Appeals.

¹⁴ On May 29, 2012, Megna mailed to the court a memorandum. Megna then said he was not going to utilize or file it, but has nonetheless designated it for appeal.

motion) Counsel for Estate of Thompson filed a response on May 20, 2011. (R. Response) Megna filed a Reply on May 26, 2011. (R. Reply) At that time, motions for summary judgment were outstanding. Despite multiple attempts, Megna could not be reached to schedule outstanding motions, including Megna's motion to reconsider his disqualification. (R. order of June 17, 2011) In its June 17, 2011 order, the court provided notice for a hearing date of July 19, 2011 as to Megna's motion to reconsider the order disqualifying him and outstanding summary judgment motions. The court reconfirmed Megna's disqualification, but indicated that he would be permitted to appear on PDHC's behalf for the limited purpose of to the summary judgment hearing, prior to the court ruling upon Megna's motion to reconsider his disqualification.

Megna was once again put on notice of the terms of his disqualification at the July 19, 2011 hearing. (R. Transcript, pertinent pages only) Thereafter, Megna was put on notice that the court intended to grant summary judgment adverse to PDHC, as well as to deny Megna's motion to reconsider his disqualification, with formal orders to follow. (R. letter of court to counsel)

Under the auspices of Thompson, subsequent to July 30, 2011, Megna served subpoenas and subpoenas duces tecum on non-party Desa Ballard, the Thompson Defendant's attorneys and other attorneys in unrelated cases. (R. subpoenas, motions to quash and objections) In the subpoenas, Megna sought discovery regarding PDHC and matters relating to Anasti. In the subpoena he served upon Ms. Ballard, Megna sought communications by and between her and other attorneys, including: Mr. James, Mr. Josey, Kenneth Woodington, Douglas Truslow, Mr. Licata, Andrew Savage, Magistrate Judge Caroline Streater, Ashley Stratton, and lawyers in the McNair Law Firm and/or

their agents; lawyers in Turner Padgett Law Firm and/or their agents, Thomas Earle and Curtis Dowling.¹⁵

Upon receipt of the subpoena and subpoena duces tecum issued by Megna, Ms. Ballard filed a motion to quash and for sanctions on or about August 4, 2011. Estate of Thompson's attorneys filed similar motion(s) as did other attorneys who had been served with subpoenas by Megna. (R. objections). Respondent in Anasti also objected to Megna's subpoenas that had been served upon him under the auspices of Thompson.

On August 11, 2011, Megna filed a "Plaintiff's Reply to Motion for Protective Order, Request for Subpoena [sic] and for Attorney's Fees and Costs". (R. Reply) As well, he wrote to the court purporting to remain the attorney for PDHC. (R. various letters to the court including letter of August 8, 2011)

Megna sought (a) to have the court disqualify the Thompson defense counsel, (b) to have the court enforce the subpoenas issued by Megna subsequent to his disqualification, (c) to have the court sanction one of Mr. Josey's law partners who had withdrawn from the representation of PDHC in an unrelated workers' compensation case, and (d) to have the court issue an order finding that the Thompson defense attorneys were unethical in objecting to subpoenas issued by Megna after his disqualification.

¹⁵ Mr. Woodington had previously represented a party adverse to PDHC in a separate matter (PDHC v. Gov. Sanford, et. al.) that had nothing to do with Anasti, Thompson or the Florence cases. (ROA in Anasti, page 309) Mr. Savage is an attorney in Charleston and had nothing to do with any of the cases. Judge Streater is a Richland County Magistrate Judge who has had no involvement with Thompson, Anasti or any other related cases. Ms. Stratton is an attorney. Mr. Truslow, Ms. Ballard, Mr. Earle, Mr. Dowling and the McNair Law Firm had no involvement in Thompson. Megna had (personally) sued the McNair Law Firm and one of its attorneys, Celeste Jones (and other attorneys), in an unrelated Florence case(s) in which they and Megna were involved. Mr. Earle was only involved in Anasti and a separate case(s) in which Megna was opposing counsel. Mr. Dowling was involved in a separate case(s) as opposing counsel, wherein Megna had sued a lawyer for malpractice. Neither the undersigned nor Ms. Ballard were involved as attorneys in any of those cases.

On August 12, 2011, the court indicated that it was granting summary judgment to PDHC's opposing party in Thompson, with a formal order to follow. (R. the letter from the court) In a separate order dated August 12, 2011, the court denied Megna's motion for reconsideration of his disqualification and *sua sponte* quashed all motions, subpoenas and filings signed only by disqualified counsel Megna issued after June 17, 2011. (R. order) PDHC's remaining counsel (Megna's law partner Matthews) was directed to personally serve a copy of the court's order on all parties affected by the court's decision.¹⁶ The formal order granting summary judgment to Estate of Thompson and against PDHC was signed on September 1, 2011. (R. order) On September 13, 2011, Megna filed a motion for reconsideration of the order granting summary judgment. (R. motion) On September 28, 2011, the court dismissed Megna's motion for reconsideration of the order granting summary judgment as improper, in that he remained disqualified. (R. order)

Megna's disqualification was acknowledged by him in a letter to the court on October 10, 2011. (R. letter) Megna represented that he would not further violate the court's order of disqualification.¹⁷ The court in turn acknowledged Megna's letter and congratulated him for making that decision. (R. letter)

On behalf of PDHC, Megna appealed the court's September 1, 2011 order granting summary judgment. Megna filed the appeal on or about October 28, 2011. (R-see notice of appeal)

¹⁶ It does not appear that Matthews or Megna and Matthews ever honored the Court's directive.

¹⁷ Despite that representation, Megna continued to do what he represented to the court he would not do by virtue of, *inter alia*, later seeking to have Mr. Josey disqualified and sanctioned (See Megna's Synopsis dated March 19, 2012).

Megna actually filed three appeals on PDHC's behalf in Thompson. One related to Megna's disqualification. Another appeal related to the grant of summary judgment to PDHC's opposing party/Estate of Thompson. The third appeal related to a determination that Megna had been untimely in appealing the underlying probate matter.

Megna/PDHC lost all appeals. (R. order of July 3, 2013)¹⁸

While Thompson was on appeal and subsequent to his disqualification, Megna issued subpoenas in February and March, 2012, utilizing Anasti as a platform to, *inter alia*, engage in discovery relative to PDHC, Thompson Estate's attorneys and other cases and other attorneys in other separate cases in which Megna and/or PDHC was or had previously been involved.

Subsequent to the filing of the undersigned's March 9, 2009 motion(s) for protection and sanctions against Megna, a consolidated sanctions hearing with Ms. Ballard's motion for sanctions against Megna in Thompson was scheduled to be held on May 15, 2012. The procedure to be followed was outlined by the court. (R – see letter from the court) No objection was entered by Megna to the form, format or procedure to be followed for the hearing.

In addition to the documents, affidavits and matters submitted for Anasti, affidavits supporting Ms. Ballard's motion were filed. Megna did not file any affidavits.

The court issued its orders sanctioning Megna in both Anasti and Thompson.¹⁹
This consolidated appeal follows:

¹⁸ On July 3, 2013, the Court of Appeals determined that Megna's appeal from the probate matter was untimely. Likewise, the Court of Appeals determined that Megna's appeal on PDHC's behalf was untimely and Megna's motion(s) were found and concluded to have been void *ab initio*; that Judge Baxley's orders were correct. Furthermore, while determining that Megna's appeal was otherwise moot based on untimeliness and to be dismissed, the Court of Appeals found and concluded that the Lower Court did not err in disqualifying Megna.

STANDARD OF REVIEW

A trial judge's ruling relative to sanctions will not be disturbed absent a clear abuse of discretion. Russell v. Wachovia Bank, N.A., 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006); Culbertson v. Clemens, 322 S.C. 20, 24, 471 S.E.2d 163, 165 (1996). On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support. Tirado v. Tirado, 339 S.C. 649, 530 S.E.2d 128 (Ct. App 2000); Stone v. Reddix Smalls, 295 S.C. 514, 369 S.E.2d 840 (1988).

LEGAL ARGUMENTS

ADDRESSING APPELLANT'S ARGUMENT 1:

Whether Appellant Megna was entitled to repeatedly disobey the lower court's orders disqualifying him on the ground that he had filed a motion to reconsider.

Megna's argument initially appears to be limited to his misconduct in Thompson. However, because there is some overlap. The argument is addressed and for that reason, Respondent included in his brief a detailed history of the proceedings.

To the extent Megna would suggest that his argument relates to Anasti, Respondent adopts and incorporates the argument of Ms. Ballard in her Thompson brief.

Setting aside Megna's failure to preserve the issue, and because Megna's argument attempts to make a lateral correlation to Anasti, this supplement is added. It relates to all arguments and is to be incorporated by reference. The sequence of events clearly established that Megna was using Thompson **after** his disqualification as a subterfuge to gather self-serving information relative to Anasti and, *vice versa*, using

¹⁹ A proceeding for criminal contempt is pending, but it has been stayed due to Megna's second substitute counsel being ill.

Anasti, in which he had no client or further interest in acting in her behalf for the purposes of Thompson. Neither Megna's motion to reconsider nor an appeal by PDHC in Thompson in 2011 would authorize Megna to thereafter use Thompson as a basis to engage in discovery in Anasti in February and March, 2012, much less to attempt to surreptitiously use Anasti to engage in discovery in Thompson after Megna's disqualification or during the Thompson appeal. Moreover, when he sought discovery in Anasti under the auspices of Lee's name, he had no client. His representation of Lee had been restricted by the Bankruptcy Court's orders lifting the bankruptcy stay. Megna did not have Lee's permission or approval to act at that stage and was exposing her to risk for sanctions, had she actually approved of Megna's conduct at that stage after loss of her appeals, coupled with her bankruptcy. Notably, Megna did not file a motion on his own behalf for discovery in Anasti. And, he did not seek court permission, much less an agreement of respective counsel, to have PDHC intervene in Anasti. Simply stated, Megna's argument is internally contradictory and meritless. There was substantial evidence supporting the findings and conclusions of the lower court. The facts and events are significant: In July and August, 2011, Megna utilized the purported aegis of Thompson as a basis upon which to obtain discovery directed at Ms. Ballard in that she had provided assistance to Respondent on an appeal issue involving Anasti. Further, in his discovery submissions, Megna sought to impose upon numerous attorneys who had nothing to do with the case. At the time, Megna was clearly disqualified from acting as the attorney for PDHC in Thompson. He did not seek the court's permission to violate, suspend or set aside the court's prior order(s) disqualifying him. He acted at his own peril. Given the inflammatory claims of Megna in his reply to the motion in Thompson

to have him disqualified, the conclusion is that he has had a long pattern of simply attempting to harass those who may not agree with his tactics. Megna had been repeatedly advised that he was disqualified in Thompson. Megna remained disqualified in Thompson, yet he continued to flaunt his legal responsibility to obey the court's orders and directives. By that point in time, Megna had no right to engage in discovery in Anasti - the Bankruptcy Court had limited Megna's involvement on his (former) client Lee's behalf to the conclusion of the appeal. The reasons for the Bankruptcy Court to do so are obvious and contained in the Bankruptcy Court's orders. Ploys being utilized by Megna appeared to be a disingenuous attempt to cover up for the consequences of him having been untimely in filing an appeal in the first instance; that he was unlikely to be successful on appeal in any event and that no trustee or creditor has ever supported his contentions.

Lee's appeal in Anasti had previously been determined by the Court of Appeals to have been untimely filed by Megna; the appeal was dismissed in April, 2011. His motion for reconsideration and his petition for writ of certiorari were denied as well. Megna could not engage in discovery under the auspices of Lee's name in Anasti, so he resorted to a transparent attempt to utilize Thompson, doing so after his disqualification. He used the same type tactic in Thompson, knowing full well that he was disqualified. Furthermore, no appeal or post appeal discovery had been requested by Megna in either case, nor had any been authorized. Moreover, Megna had unequivocally and already repeatedly stated in September, 2007 that he and Lee had determined that no further discovery was appropriate; that neither he nor Lee would participate in it. In fact, Megna went to far as to file a motion to prohibit further discovery in Anasti on September 11,

2007. (R. Motion) Megna did not seek court authorization for discovery after his petition for writ of certiorari was denied. It would have been unjustified to do so in that; (a) Lee's appeal was concluded, (b) no post appeal appearance by Megna (on Lee's behalf) had been authorized by the Bankruptcy Court – in fact the contrary had been expressed in its order(s), (c) Lee had no need for discovery as to any issue; in effect, Megna no longer had a client in Anasti at that point, and (d) he had virtually everything in the case he previously insisted he needed and he had no interest whatsoever in damages claims by Plaintiff Anasti against Wilson and Goodwin. If Megna was nonetheless seeking discovery for some other self-serving purposes, he needed, at a minimum to properly request it by way of motion in an appropriate court. He did not do so.²⁰

Megna has repeatedly engaged in dilatory and contradictory conduct. His bad motives, bad faith, and repeated violation of the court's order of disqualification in Thompson for attempted use in Anasti is illustrated by his "Pethoner's [sic] Reply" in Anasti in the State Supreme Court dated August 10, 2011. Plaintiff/Respondent Anasti had at the time moved to expedite a resolution of Lee's petition for writ of certiorari filed by Megna - precisely because the incessant delays that had been ongoing without a final resolution for over four (4) and a half years. In opposition to the motion seeking to perhaps hasten a final resolution, Megna asserted that;

²⁰ Megna has claimed he needed discovery as to damages, yet neither he nor Lee were in any way involved in damages issues in Anasti. And while Megna was fully aware of the reasons sanctions were being sought against him personally, he did not timely raise it as a basis for his misconduct. Finally, given his extensive involvement in the case since 2007 through 2012, he had virtually every document, including written explanations, affidavits and a detailed letter setting forth the circumstances. (R. letter dated January 20, 2012)

“counsel and others are engaged in inappropriate behavior that is the subject of pending subpoenas and motions for enforcement of the subpoenas in another case pending before the Darlington County Court of Common Pleas...”

The Darlington case referred to was Thompson. Notably, Megna was disqualified at that time, but he certainly did not disclose that fact to the Supreme Court.

Regardless of the fact that none of Megna’s contentions ever had any merit, Megna cannot have it both ways. Megna knew he was disqualified from engaging in discovery and “motions for enforcement” in Thompson, yet Megna expressed an intent in the Supreme Court in Anasti to actively continue to do what he had repeatedly been directed not to do by the Circuit Court in Thompson. Disingenuous conduct by Megna is precisely what sanctions are designed to deter and/or prohibit. The lower court was entitled to enforce its order(s) and cannot be faulted. Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813. The lower court had a right to preserve order and proper respect for the legal system, as well as to protect those who would be unjustifiably harassed. Sanctions were otherwise proper because misconduct, once tolerated, encourages and breeds even more disrespect for the court’s orders. Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 858 P.2d 1054 (Wash. 1993)

Megna has referenced an August 8, 2011 letter, as well as an October 10, 2011 letter he sent to the lower court in Thompson representing that he would not further violate the court’s orders. Megna relies on it to show his “good faith”. The letters do not support Megna’s assertions. The letters further established Megna’s lack of candor and lack of any good faith. Megna was warned of his misconduct repeatedly. Megna stated

he was aware of his disqualification and would not continue. Then he opted to do what was not allowed and which he said he would not do. In context, the inescapable conclusion is that Megna was willfully flaunting the terms of his disqualification for ulterior, self-serving reasons in July and August, 2011 and on March 19, 2012 (in his "Synopsis") in Thompson, in February and March, 2012 in Anasti – and in each case as a subterfuge and disingenuously for use in the other case and other unrelated cases. Megna was clearly utilizing numerous discovery devices in Anasti in a transparent, duplicitous attempt to avoid the consequences of his disqualification in Thompson, as well as to continue to pester those on opposing sides. He was wrongfully using numerous discovery devices in Thompson to harass the same persons and others in Anasti, as well as using it as a springboard to gather information relative to both cases where he was not permitted to act, as well as for use in case(s) in Florence county that had no relationship to either Anasti or Thompson. Lee in particular had no interest in any of the cases at that juncture.

Such conduct by Megna is most troubling when it is considered in conjunction with Megna's March 11, 2011 response in Thompson to the motion to have him disqualified (see especially pages 18-20) and the orders in Anasti dated April 3, 2008 and April 1, 2009.

It is sufficient to say that the lower court had before it overwhelming evidence of Megna's duplicity, in addition to his multiple and repeated violations of SCRPC and the court's orders.

Finally, the legal authority cited by Megna is inapposite. This is so because the issue to be addressed is not whether a right to appeal was preserved by virtue of the filing

of a Rule 59(e) motion to reconsider disqualification, but instead the question is whether Megna was entitled to thereafter willfully and repeatedly ignore the court's order disqualifying him until or unless the order was set aside. The answer to that question is well settled and obvious. It is further set forth in Ms. Ballard's Brief. The order has not been set aside, stayed or reversed. Megna was required to obey the court's order. He inexcusably and unapologetically did not do so.

ADDRESSING APPELLANT'S ARGUMENT 2:

Whether the lower court erred in finding and concluding that Respondent Anasti's March 9, 2012 motion to quash was not previously decided by the Court of Appeals.

Megna has continuously asserted that the March 9, 2012 motion filed in Anasti and heard by Judge Baxley on May 15, 2012 had been previously addressed and resolved in Megna's favor by the Court of Appeals. Megna's assertion is not true. Stronger words, while appropriate, are not necessary. Suffice it to say that Megna's argument is readily disproved by even the most cursory inspection of the Court of Appeals order in Anasti dismissing the appeal as untimely:

1. The Court of Appeals rendered its decision on **April 1, 2011**. The case was dismissed for lack of jurisdiction. The Court of Appeals did not and could not address the **March 9, 2012** motion, which sought protection from discovery abuses by Megna occurring in February and March, 2012. The issue addressed in the March 9, 2012 motion was never before the Court of Appeals. The motion was never before the State Supreme Court either –

Megna's petition for writ of certiorari had been denied and the case remitted on October 7, 2011.

2. No motion for protection from Megna's affirmative discovery abuses in Anasti had ever before been addressed in the Court of Appeals. The appeal was dismissed in April, 2011, on the jurisdictional basis of untimeliness. The merits were not addressed. Megna's repeated claims to the contrary are simply once again untrue. Moreover, Megna's argument is internally inconsistent. This is so because -- if Megna's contentions had ever been deemed meritorious, i.e. that the issues (including damages and Rule 11 sanctions) were addressed on the merits and that Lee "won", there would have been no reason for him to attempt to engage in discovery in Anasti. In addition, Megna clearly would not have needed (or been entitled to) discovery under the auspices of Anasti, relating to some alleged nefarious conspiracy against him personally by attorneys in Thompson, or a judge and his family and others in Florence addressed *infra*, and various attorneys in cases in Florence in which he was involved as a party(s). Likewise he would not have had any need for discovery relative to an unrelated federal case with Mr. Woodington that he previously lost... not relating to either Anasti or Thompson.
3. The Court of Appeals did not rule on the outstanding November 7, 2007 Rule 11 sanctions motion. Furthermore, and despite Megna's averments to the contrary the November 7, 2007 motion for sanctions was not before Judge Baxley. Judge Baxley made that abundantly clear in his order. (R. order and

especially finding number 4) Again, it is emphasized that the Anasti appeal was previously dismissed in that it was jurisdictionally defective – due to Megna’s inattention to detail. His multiple attempts to assert arguments that are untrue is likely a factor as to why he is still facing two criminal sanctions hearings, issued by the court *sua sponte*. Motions for discovery were not before the Court of Appeals, and thus were not addressed either. The merits of the case were never addressed. The November 7, 2007 motion was not addressed by the Court of Appeals. No substantive issue was addressed. Damages issues were not addressed by the Court of Appeals. The case was remitted for the resolution of outstanding issues – which consisted of **damages** against Wilson and Goodwin alone and Rule 11 **sanctions** against Megna alone. Upon a **damages** hearing date being set and upon notice that Wilson and Goodwin’s attorney being in a coma, Megna then engaged in the conduct that was the subject of the motion for sanctions dated March 9, 2012.

4. At the time of dismissal of Megna/Lee’s appeal in Anasti in April, 2011, Respondent did, out of an abundance of caution, move for Rule 269, SCACR sanctions, limited to Megna’s misconduct during the period of the appeal only. By that time, Respondent had already made abundantly clear his contention that the court had no jurisdiction over an untimely appeal. That is self-evident in Respondent’s brief – it is devoted to the issue of jurisdiction. This court obviously agreed that it had no jurisdiction over Lee’s appeal, precisely because it had been untimely filed by Megna. More to the point, Rule 11 sanctions were not addressed by the Court of Appeals because that

issue was not before it. Besides, the basis for Rule 11 frivolous proceedings sanctions is to be distinguished from discovery abuses and other separate and distinct sanctions, as well as those sanctions available under Rule 269. Since there was no jurisdiction over the appeal, the Court of Appeals presumably would not have addressed an issue that was not properly before it. Thus, even if Megna's argument otherwise had any merit relative to Rule 269, it would not have been dispositive of the separate and distinct November 7, 2007 Rule 11 sanctions motion, nor would it have had any relationship to the subject of the court's May 15, 2012 hearing. Disposition of a Rule 269 motion in 2011 is distinguished from the initial Rule 11 SCRCF motion for sanctions, and it too is distinguished from the March 9, 2012 motion for sanctions.

The fallacy of Megna's argument is otherwise comprehensively addressed in Anasti's memorandum in reply to Megna's Synopsis for the May 15, 2012 hearing (R. Memorandum and Exhibits) and by Ms. Ballard. To avoid redundancy, the terms of Anasti's reply memorandum and Ms. Ballard's brief are applicable to all issues raised by Megna. They are adopted and incorporated herein by reference.

ADDRESSING APPELLANT'S ARGUMENT 3:

Whether the March 9, 2012 motion to quash before Judge Baxley on May 15, 2012 was the same as the motion for sanctions (against Appellant) filed November 7, 2007.

As a preliminary, threshold matter, Megna has not timely or properly preserved the issue he raises. Respondent's response to Megna's first and second arguments, *supra*, are adopted and incorporated herein.

However, *arguendo*, Megna has once again misstated and misapplied what actually occurred. His factual claims and alleged sequence of events are belied by the record and this court may take judicial notice of proceedings previously before it, as well as their disposition. No law cited by Megna is applicable. What Megna asserts is specious. A simple reference to the pleadings disproves Megna's assertions:

After Megna's appeal in Anasti was concluded, the case was remitted. There was at that point, left for resolution;

- A damages hearing (not involving Megna or Lee), and
- A November 7, 2007 Rule 11 sanctions hearing involving Megna alone. The November 7, 2007 motion was amended to delete Lee from consideration, given her bankruptcy. The motion was in fact timely, however it was expressly not before Judge Baxley.

Judge Baxley did not hear either the damages hearing, or the November 7, 2007 motion for sanctions. That is made clear in his orders. (R – see order)²¹ The issues before Judge Baxley essentially related to Megna's repeated disobedience of court orders disqualifying Megna in Thompson and in conjunction with his misuse of SCRCF in February and March, 2012 in Anasti, especially under the guise of representing Lee and/or alternatively Wilson and Goodwin. Through what can only be characterized as duplicitous, overtly disingenuous legal machinations, Megna has been successful in

²¹ In fact, Wilson and Goodwin subsequently had a hearing and then confessed judgment as to damages.

delaying resolution – of the November 7, 2007 sanctions order now since January, 2008 by virtue of Lee's/Megna's appeals, Lee's various bankruptcy filings and Megna's multiple motions and appeals in both Federal and State courts and his other misconduct that is elsewhere detailed. As it relates to the subject of the November 7, 2007 motion, it is alleged to have commenced in Anasti by at least the time of the filing of a "flim-flam" defense by Megna to the complaint and has continued almost unabated. That said, the issue before Judge Baxley and hence the within appeal was limited to consideration of the March 9, 2012 motion in Anasti, in conjunction with Ms. Ballard's motion in Thompson. The other matters and his other conduct that have been exposed have corroborated that Megna was continuing to abuse the legal system. Otherwise, they are not relevant to the disposition of the distinct issues now before the court.

Finally, though perhaps redundant, it is to be stressed that (a) the sanctions matter before Judge Baxley in Anasti was entirely distinct from the other sanctions motion(s) against Megna; (b) the veracity of Megna's claims are belied by his own "Synopsis". He claimed he was engaging in discovery as to "damages"; and on behalf of Wilson and Goodwin; a matter in which he had on January 18, 2012 and subsequently expressly stated neither he nor Lee had any interest (R. Transcript of the proceeding); and (c) Megna argues inconsistently that he must engage in discovery relative to issue he claims the Court of Appeals had previously decided. Megna is estopped to argue positions and justifications to act that are diametrically the opposite from what he previously has represented to the courts.

ADDRESSING APPELLANT'S ARGUMENT 4:

Whether Appellant was entitled to misuse the discovery process in violation of the terms of his disqualification, with no client, in violation of the bankruptcy court's orders and with no authority.

As a threshold matter, Megna has once again not properly preserved the issue. Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) and on the grounds set forth by Ms. Ballard in her brief. The issue was not raised at the time of the argument on May 15, 2012. Thus, Megna's argument should be disregarded.

Aside from the fact that Megna has now attempted to reengineer yet another specious, alternative excuse for his misconduct, the facts demonstrate once again that any and all of the justifications proffered by Megna's are without merit. Megna previously attempted to justify his misconduct by arguing that he needed to engage in discovery as to **damages** – a matter in which he repeatedly conceded neither he nor Lee has any interest. In his Synopsis, Megna's justification was then that he was seeking discovery on behalf of Wilson and Goodwin, *to wit*: as to damages. They are the parties who were the recipients of a \$216,000 award against Lee in the "companion case". It is not coincidental that Megna's representation of Lee had that result. The absolute fallacy in Megna's argument is exhaustingly exposed in Anasti's reply memorandum to Megna's Synopsis. Otherwise, Megna argued in his Synopsis that

"the state Court of Appeals actually denied Mr. Anasti's request for damages";

and

“the Court of Appeals denied Plaintiff’s Rule 11 motion for sanctions”.

These representations by Megna are not true. Stronger words, while appropriate are not needed. A simple referenced to the Court of Appeals’ decision to dismiss the appeal should be sufficient. However, and despite being untrue, Megna’s contentions make the point that if Megna were correct, he would have had no reason to seek discovery. Hence, it would have, *pro tanto*, been frivolous and an harassment to seek discovery in a case which had already been resolved by the Court of Appeals. Megna’s representations are also to be juxtaposed against Megna’s repeated, but equally untrue and disingenuous, assertions to the Bankruptcy Court and others that;

“the timeliness order of the state trial court [Judge Manning] has been reversed by the state COA”. (R. letter and emails from Megna and Matthews)

Finally, Megna made clear in his submissions to Judge Baxley that he was seeking discovery as to damages. (R. Zmroczek email of May 14, 2012, as well as Megna’s memorandum dated May 15, 2012) Damages were not being sought against Lee nor Megna. Damages were at the relevant times being sought solely against Wilson and Goodwin. Neither Lee nor Megna were involved in that aspect of Anasti. The specious nature of Megna’s argument is further exposed by the fact that Thompson would have absolutely nothing to do with real estate related damages in Anasti.

If Megna were to theorize that he needed discovery as to sanctions, rather than damages as he claimed, and aside from not timely preserving the issue, there were conventional means to seek it. And, he should have told the truth, rather than to

continually assert specious reasons to want it. Megna did not avail himself of those opportunities to be truthful, aside from the fact that he had virtually everything needed over six years of litigation (nine years once the “companion case” is factored in). Megna had no legitimate basis to act as he did. His excuses are disingenuous. The means he resorted to were not only in non-compliance with the law, but were time-consuming to combat. The lower court had ample evidence supporting its findings and conclusions.

ADDRESSING APPELLANT’S ARGUMENT 5:

Whether sanctions may be issued by a court under appropriate circumstances.

Megna did not preserve this issue. Having not been properly preserved, it is to be rejected. Patterson v. Reid, *supra*.

This is an issue directed at Ms. Ballard and is best addressed by her. However, in support of her right, Respondent would show that Megna sought confidential communications between an attorney and his/her clients, as well as attorney work product. Megna grossly misused SCRCF. His actions were essentially part of a long standing, unjustified personal attack against Respondent, Ms. Ballard and others. Respondent and Ms. Ballard properly and successfully resisted those unjustified and mean spirited attacks by Megna. His attacks were transparently motivated because they had opposed him. He has done the same thing to other attorneys in other cases. Sanctions were appropriate. Megna’s phrasing of the issue as fee shifting is not well founded. He confuses sanctions and legal fees. To the degree further explanation is needed, Respondent in Anasti adopts and incorporates the arguments set forth by Ms. Ballard in her brief on this issue and refers to Judge Baxley’s orders. Megna’s conduct

was sanctionable and the court was within in its right and discretion to issue its order. Ex Parte Bon Secours-St. Francis Xavier Hospital, Inc., In Re Wieters, 393 S.C. 590, 713 S.E.2d 624 (2011). There was ample evidence to support the court's findings and conclusions as sanctions.

ADDRESSING APPELLANT'S ARGUMENT 6:

Did evidence exist reflecting that Appellant Megna misused the "discovery process"?

As a threshold matter, Megna did not properly or timely preserve this argument. It should be determined to be waived. Patterson v. Reid, *supra*. Also in accord, Respondent in Anasti adopts and incorporates herein by reference the arguments set forth by Ms. Ballard in her brief.

Addressing the substance of Megna's argument, *arguendo*, it is readily ascertainable from an inspection of his discovery submissions that (a) Megna did not comply with SCRCP in his various discovery devices; he was in gross non-compliance, while at the same time expressing feigned courtesy and (b) Megna improperly utilized discovery devices in Anasti as a platform for ulterior purposes in Thompson (and other, unrelated cases) and improperly used discovery devices in Thompson as a platform for ulterior purposes in Anasti (and other, unrelated cases). This is obviously so in that Megna's subpoenas in Anasti sought Medicare and Medicaid information relative to Thompson, as well as communications involving PDHC, Mr. James, Mr. Josey, Ms. Ballard, etc. How and why attorneys Savage, Stratton, Woodington and Richland County Magistrate Judge Streater were related to Megna's subpoenas issued in Thompson has never been explained by Megna. This undeniable circumstance along with others

supports the conclusion that Megna was improperly seeking discovery by misusing Thompson in which he had been disqualified, but in reality it was related to irrelevant issues in Anasti and *vice versa* in Thompson. In Megna's subpoenas to Ms. Ballard and others under the guise of Thompson, and while clearly disqualified, he sought information relative to Respondent and his client and many other attorneys who had nothing to do with Thompson or Anasti. He also sought to depose Respondent's paralegal.²² Ms. Ballard was not involved in Thompson, other than to merely confirm on the Darlington Clerk of Court's website that Megna was disqualified. The undersigned Respondent was not involved in Thompson. Neither was his client. Anasti and Thompson were separate and distinct, as Megna conceded in his "Synopsis". Megna has misused discovery under the auspices of Anasti for Thompson and/or for some other ulterior purpose involving some type of worker's compensation action which has never involved Anasti nor Respondent. Anasti had absolutely nothing to do with such issues; Anasti was a property case. It had nothing to do with workers' compensation, Medicare or the issues in Thompson. The inescapable conclusion was that Megna was misusing the legal process in each case separately and in conjunction with one another. The facts supported such a conclusion. And, even if the accusations Megna attempts to level at Ms. Ballard, Mr. James and Mr. Josey, in Thompson (and against judges, their families, physicians and attorneys in cases in Florence as he has alleged) ever had any merit, they had nothing to do with Megna's discovery misconduct in Anasti that was alleged in the March 9, 2012 motion that was before Judge Baxley. Ms. Ballard consulted with Plaintiff/Respondent's attorney in Anasti as to his ethical obligations to report Megna's

²² She had produced conclusive proof disproving Megna's claims relative to timeliness (heard by Judge Manning). That fact has had nothing to do with damages, the prior Rule 11 motion, nor Thompson.

misconduct *vis a viz* the findings set forth in the lower court's orders of April 3, 2008 and April 1, 2009, as well as to seek advice as to what could be done to force Megna to make a proper record on appeal... precisely so that, *inter alia*, the appeal Megna had commenced on January 4, 2008 could be concluded. That did not relate to the matters before Judge Baxley. Moreover, in Megna's Synopsis, he has asserted that "Ms. Ballard inserted herself in the Richland (Anasti) case, consulted with Mr. Truslow....". Thus, if Megna had ever had any colorable basis for discovery from Ms. Ballard, it would have been to seek it from her in Anasti, not under the auspices of Thompson, long after he had been disqualified. In short, the lower court had before it compelling evidence supporting the findings and conclusions it made in both Anasti and Thompson. The court's order relative to Megna's misconduct in this instance should not be disturbed.

Megna's inattention to important legal detail in these instances has not been isolated. Megna's misconduct has been pervasive and shocking, aside from his *ad hominem* and unjust personal attacks on numerous attorneys who have opposed him. Megna has an established pattern of non-compliance with his legal obligations. He has an established pattern of acting unethically. His harassment and gross misconduct under the auspices of "discovery" in these two instances are but another example.²³

Finally, Megna's unapologetic last gasp justification for his repeated misconduct was that he needed written communication of numerous attorneys in order to "determine the conflict of Josey...". Megna's argument has at a minimum the appearance of being not only irrelevant, but contrived: First, Megna's assertion has nothing to do with Anasti; it is a red herring designed to distract from the core issue. Second, Mr. Josey's

²³ In yet another case involving Megna (Pee Dee, Megna, et al. v. McNair Law Firm, et. al.; case # 2012 - 213052), the appeal from a Florence dismissal of Megna's case was itself dismissed because of repeated inattention to legal requirements and repeated lack of timeliness. (R. order of September 11, 2013)

representation related to Thompson, not Anasti. Megna admitted it in his August 10, 2011 reply to the State Supreme Court, *to wit*: that he was pursuing discovery in Thompson (despite being disqualified – a circumstance that he conveniently did not disclose to the Supreme Court). Third, Megna was disqualified in Thompson. Megna remained disqualified. He had no legal right to determine anything by way of the issuance of unauthorized and grossly inappropriate discovery in Anasti for use in Thompson, especially after his disqualification or while Thompson was on appeal. Besides, Mr. Josey's communications in Thompson would seemingly be covered by work product and attorney-client privilege, as would Respondent's in Anasti. Fourth, Mr. Josey was not counsel in Anasti. Megna has claimed he needed information relative to damages, but neither Mr. Josey, nor Mr. James, nor Ms. Ballard had anything to do with the issue of damages in Anasti. Fifth, Thompson did not relate to Anasti and *vice versa*. The only true, relevant connection between the two cases was that Megna had engaged in misconduct in **both** cases independently and in conjunction with one another. That fact does not give legitimacy to Megna's wholesale attempt to usurp and abuse the discovery process and otherwise violate the lower court's order of disqualification under any scenario. Moreover, there has been no misconduct found on the part of those on opposite sides of cases involving Megna. That has been repeatedly made clear by the courts and never to date disturbed in any of Megna's numerous appeals. Sixth, there has been no "confidential information" ever demonstrated to have been wrongfully disseminated. The fact that attorneys whom Megna chose to harass may have communicated relative to the consequences of Megna having previously been found to have engaged in gross misconduct and untrue representations to the courts or that those attorneys may have

been diligent in inquiring about the status or circumstances of Megna's past misconduct is not to be faulted, especially in light of the court's orders of April 3, 2008 and April 1, 2009, the Bankruptcy Court orders, the order of disqualification in Thompson and the loss of Lee's cases at summary judgment and on appeal due to the lack of professional attention to detail/lack of timeliness. In short, Megna was alternatively or both on an unjustifiable "fishing expedition" and intending to harangue and annoy those with whom he did not see eye to eye on various cases. The conclusion was properly drawn that Megna's conduct was grossly improper in this instance as well. Substantial evidence supporting such a conclusion exists.

ADDRESSING APPELLANT'S ARGUMENT 7:

Whether Megna acted in "good faith"?

This issue has not been properly preserved by Megna. Patterson v. Reid, *supra*, and as fully briefed by Ms. Ballard. Moreover, Megna's argument does not appear to be addressed to any legitimate issue in Anasti.

Addressing Megna's contentions, *arguendo*, the essence of Megna's argument is that he was entitled to violate the court's order disqualifying him in Thompson, using Anasti to do so as a part of his unrelenting, disingenuous campaigns to harass and vilify those attorneys who had opposed him in various cases. Megna's lack of good faith and other misconduct is adequately set forth in the record on appeal and as otherwise addressed within the body of the within brief. Simply stated, Megna was disqualified, yet he continued to do and thereafter to do what he was directed not to do. Megna's lack of good faith is also addressed in the memorandum in response to the Synopsis of Megna. (R. Memorandum) Megna's argument has overwhelmingly been proven to be

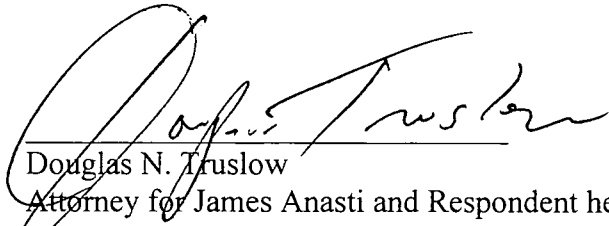
meritless. He has continuously acted in bad faith, in conjunction with an incredible inattention for legal detail from the inception. Moreover, in an attempt to avoid the consequences of his untimeliness in appealing in the first instance in Anasti, Megna was repeatedly found to have been deceitful in dealing with the courts. He has not heeded his legal responsibilities. He has done the opposite of what he should have done. Megna's continuing and unapologetic excuses were rejected by the lower court. There has been no "good faith" by Megna. There was substantial, in fact overwhelming, evidence supporting the conclusion reached by the lower court. The decision and resolution should not be disturbed on appeal.

This court has only to review Megna's March 11, 2011 return in Thompson (pages 18 -20) and the lower court's orders of April 3, 2008 and April 1, 2009 in Anasti to reconfirm that Megna has not ever acted in good faith in either Thompson or Anasti. Megna has a long, documented history of grossly inappropriate *ad hominem* attacks and other misconduct against those who have unfortunately found themselves on opposite cases from Megna. The entire record, including Megna's response to the motion to dismiss his initial appeal in Anasti (as untimely), his various emails referring to opposing counsel as being a "scorpion" and his other pleadings as support for the conclusion that Megna has not conducted himself in "good faith" in either Anasti or in Thompson. Thus, as with his other claims, Megna's argument is likewise meritless and should be rejected.

CONCLUSION

For the reasons set forth herein, Respondent urges this court to affirm the decision of the lower court.

RESPECTFULLY SUBMITTED,



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