

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

D & C BUILDERS, INC., )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 RICHARD M. BUCKLEY, ET AL, )  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

2013-CP-23-01833

TRANSCRIPT OF RECORD

JULY 23, 2013  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

BRIAN A. MARTIN, ESQUIRE

ATTORNEY FOR DEFENDANT:

M. STOKELY HOLDER, ESQUIRE

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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WITNESS

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CERTIFICATE OF REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were presented during this hearing)

1           **THE COURT:** All right, Mr. Martin, we're here on your  
2 motion to reconsider.

3           **MR. MARTIN:** Thank you, Your Honor. Please the Court. I  
4 appreciate the opportunity and the time that you have given in  
5 this case. And I first would like to apologize to you if I am  
6 over-thinking the situation.

7           **THE COURT:** Well, here's the deal.

8           **MR. MARTIN:** Yes, sir.

9           **THE COURT:** You want me to disqualify Mr. Holder's law  
10 firm because of this prior representation. And you are  
11 claiming that they know something that would violate the  
12 attorney/client privilege, basically.

13           I mean, I've thought of different analogies. One is in a  
14 trade secret case, one side alleges that the other side is  
15 violating a trade secret. There is no way that anyone, a  
16 fact-finder or a judge, anybody can determine whether or not  
17 there's a trade secret unless they know what the party claims  
18 it is.

19           I'm not going to automatically disqualify a law firm from  
20 representation. If you want me to do something of that  
21 significant of nature, then there has to be some kind of  
22 basis.

23           If he and his firm knows some confidential, privileged  
24 information, all I'm asking you to do is to turn that over to  
25 me and to them so that they have an opportunity, 'cause I'm

1 not going to know what they know or what's privileged, for  
2 them to respond under a protective order to explain what the  
3 -- whether or not it is, in fact, privileged. Because my  
4 basic understanding of all lawyers is they swear an oath to be  
5 truthful and honest.

6 And if -- and I know Mr. Holder's law firm. And if they  
7 are in possession of privileged information, then they're not  
8 going to want to risk their law license on one case. And  
9 that's what they're talking -- that's what you're talking  
10 about them doing.

11 So unless there is -- you got some other very persuasive  
12 argument, I want the log done by Friday.

13 **MR. MARTIN:** Yes, sir. First I would say, I absolutely  
14 understand the quandary because I have thought about it. And  
15 my own respects, I certainly agree with you that I don't  
16 believe that Mr. Holder and his firm would put his law license  
17 on the line in this situation.

18 In reading the Rule and the court's analysis of that Rule  
19 as I can find, I believe that this particular situation is the  
20 reason the Rule is written the way that it is for lawyers.  
21 And I believe that it is the way -- the reason that the court  
22 in the Rule put the qualification of substantially related  
23 being the determining factor of this case versus another case  
24 determining not whether confidential information has been,  
25 could be, or will be used, but whether that the two types of

1 cases are so similar in nature that the information that an  
2 attorney would obtain in that representation would  
3 necessarily, or most likely, or there would be a substantial  
4 risk, which is the language used in the Rule ---

5 **THE COURT:** Mr. Martin, you are just rehashing the  
6 argument you made before. I'm not going to throw somebody out  
7 based on -- without some reason to do it. Okay?

8 **MR. MARTIN:** Yes, Your Honor.

9 **THE COURT:** So produce the log. It's as simple as that.  
10 This happens quite frequently, believe it or not, that  
11 privileged logs are required to be produced for one reason or  
12 another.

13 If it's produced and I rule that they're not disqualified  
14 and they -- and they violate some privilege -- there are  
15 courts that can review what goes on here.

16 **MR. MARTIN:** Yes, sir.

17 **THE COURT:** This Rule is not to be viewed in isolation.  
18 Clients should be allowed to choose their lawyers. And to  
19 kick a lawyer off a case is a substantial, I don't want to say  
20 sanction, but remedy that's imposed for the requesting party.  
21 And I'm not going to do it out of thin air. Okay?

22 **MR. MARTIN:** Yes, sir.

23 **THE COURT:** You're not violating any ethical duty on your  
24 part unless you just fail to comply with an order of the  
25 court. And that's what this is. Okay?

1           **MR. MARTIN:** Yes, sir. I do still have the problem of  
2 understanding how if I provide information to them because of  
3 this circumstances, and again, this is -- I understand the  
4 quandary, that if I provide the information that I contend is  
5 confidential information that they have and obtained in the  
6 prior case, and I give that information to them, and --  
7 pursuant to this privileged log, and then the -- they contend  
8 that information is not confidential or that that information  
9 is not privileged and the motion to disqualify is denied, and  
10 they continue to represent the Defendants, then I have handed  
11 over significant information for them to use ---

12           **THE COURT:** That they already know.

13           **MR. MARTIN:** I guess what I'm saying is is ---

14           **THE COURT:** Where's the problem? I have made -- let me  
15 just put it this way. I've made the ruling and argument is  
16 over. Okay? I normally don't like to do that, but I've heard  
17 all this, I've examined it, read your motion, read everything.  
18 Turn over the privileged log.

19           I can't make a determination if they're disqualified or  
20 not without knowing about it. And I'm not going to know if  
21 the information is privileged unless they can show me -- you  
22 could claim anything, that this -- you could claim this is a  
23 secret and the other side doesn't know about it. How can they  
24 respond? It's called due process.

25           If they have violated some confidential information, some

1 part of Rule 1.9, they're going to get disqualified. It's as  
2 simple as that. And they'll be under their attorney's oath  
3 not to disclose confidential information as they currently  
4 are. So produce the log. Okay?

5 MR. MARTIN: Yes, sir.

6 THE COURT: Mr. Holder, do you want to say anything?

7 MR. HOLDER: No. That's it. Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 (Hearing ended at 10:44 am)

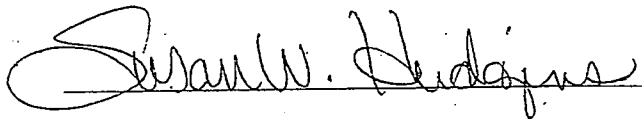
10 (End of requested transcript of record)

## 1 Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court  
3 Reporter for the Thirteenth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all the  
6 proceedings had and evidence introduced in the trial/hearing  
7 of the captioned case, relative to appeal, in the Circuit  
8 Court for Greenville County, South Carolina, on the 23rd day  
9 of July 2013.

10 I do further certify that I am neither of kin, counsel,  
11 nor interest to any party hereto.

12 October 4, 2013

13  
14  
15 

16 Circuit Court Reporter