

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2011-CP-15-0020

**RECEIVED**  
JUL 09 2012  
**SC Court of Appeals**

Ricky S. Mitchell, ..... Respondent,

v.

Marin Right of Way Service, LLC, and  
Bernardo L. Hernandez..... Appellants.

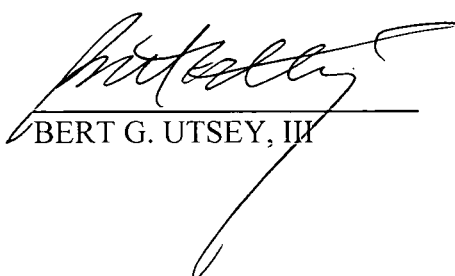
MOTION TO DISMISS APPEAL

Pursuant to Rule 224, SCACR, Respondent Ricky Mitchell hereby moves this Honorable Court for an Order dismissing the present appeal on the ground that it is an appeal from an interlocutory Order; therefore, this Court lacks appellate jurisdiction.

The bases for this Motion are set forth in greater detail in the Memorandum in Support filed herewith. Copies of the subject Orders, as well as other pertinent Circuit Court filings, are attached as an Appendix to the Memorandum in Support.

Respectfully submitted,

PETERS, MURDAUGH, PARKER,  
ELTZROTH & DETRICK, P.A.

BY:   
BERT G. UTSEY, III

123 Walter Street  
Post Office Box 1164  
Walterboro, SC 29488  
(843) 549-9544  
[butsey@pmped.com](mailto:butsey@pmped.com)

and

J. PAUL DETRICK  
P.O. Box 457  
101 Mulberry Street, East  
Hampton, SC 29924  
(803) 943-2111  
[pdetrick@pmped.com](mailto:pdetrick@pmped.com)

Attorneys for Respondent

July 6, 2012  
Walterboro, S.C.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

---

Case No. 2011-CP-15-0020

---

Ricky S. Mitchell, ..... Respondent,

v.

Marin Right of Way Service, LLC, and  
Bernardo L. Hernandez..... Appellants.

---

MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL

---

INTRODUCTION

Pursuant to Rule 224(c), SCACR, Respondent Ricky Mitchell submits this Memorandum in Support of his Motion to Dismiss Appeal. Pertinent Orders and other Circuit Court filings are listed on the Appendix to this Memorandum and are attached as exhibits hereto.

ARGUMENT

THE APPEAL IS FROM AN INTERLOCUTORY ORDER AND SHOULD BE  
DISMISSED AS THIS COURT LACKS JURISDICTION.

An aggrieved party's right to appeal is set forth in Rule 201(a), SCACR, which states: "Appeal may be taken, as provided by law, from any final judgment, appealable order or decision."

Thus, the initial question presented is whether the appealed Order<sup>1</sup> constitutes a final judgment; if not, then the remaining question is whether it is an “appealable order.”

“Final judgment’ is a term of art referring to the disposition of all the issues in the case.” *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354, 356 (Ct. App. 2004), *citing Link v. School Dist. of Pickens County*, 302 S.C. 1, n. 3, 393 S.E.2d 176, n. 3 (1990). A judgment is not final if it “leav[es] some further act to be done by the court before the rights of the parties are determined.” *Neely v. Thomasson*, 355 S.C. 521, 586 S.E.2d 141, 144 (Ct. App. 2003), *rev’d in part on other grounds* 365 S.C. 345, 618 S.E.2d 884 (2005), *citing Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (1884); *accord Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005).

The Order does not dispose of the substantive issues in this case. The parties’ claims and defenses will be litigated regardless of the Order. Consequently, it is not a final judgment. The questions presented by this appeal will be inherent in and can be argued in any appeal from the final judgment; thus, the Order is regarded as interlocutory. *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209, 212 (1942), *quoting* 4 C.J.S., *Appeal and Error*, § 99.

Since the Order is an interlocutory order, Appellants have no right to appeal it unless it is considered an “appealable order” as contemplated by Rule 201(a), SCACR. “Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within South Carolina Code section

---

<sup>1</sup> This appeal actually relates to two Orders, the first of which denied Appellants’ Motion to Disqualify (Order dated January 23, 2012) and the second of which denied Appellants’ Motion for Reconsideration of the first Order (Order dated May 1, 2012). Because the Orders relate to the denial of the same motion and the second Order amended the first Order, Respondent refers to them jointly as “the Order” for the sake of simplicity.

14-3-330.” *Wieters v. Bon-Secours-St. Francis Xavier Hosp.*, 378 S.C. 160, 166, 662 S.E.2d 430, 433 (Ct. App. 2008), *vacated* 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009) (on the grounds the circuit court’s order was not directly appealable), *citing Baldwin Const. Co. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004).

South Carolina Code section 14-3-330 governs the appealability of Orders and the scope of this Court’s appellate jurisdiction. It provides that this Court has appellate jurisdiction over:

- (1) Any intermediate judgment, order or decree in a law case *involving the merits* in actions commenced in the court of common pleas . . . ;
- (2) An order *affecting a substantial right* made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A *final order* affecting a substantial right made in any special proceeding . . . ; and
- (4) An interlocutory order or decree in a court of common pleas *granting, continuing, modifying, or refusing an injunction* or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. CODE ANN. § 14-3-330 (1976 & Cum. Supp. 2002) [emphasis added].

The appealed Order does not “involv[e] the merits” of this action sufficient to trigger appellate jurisdiction. *See Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809, 810 (1995) *quoting Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993) (“To involve the merits, the order must ‘finally determine some substantial matter forming the whole or part of some cause of action or defense....’”). Therefore, subsection (1) does not apply.

Moreover, the subject Order is not a final order; therefore, subsection (3) does not provide for appellate jurisdiction in this Court.

In addition, the Order does not deal with injunctive relief, so subsection (4) is inapplicable.

Finally, while Appellants may contend subsection (2) provides them a basis to appeal the Order because it affects a substantial right,<sup>2</sup> the South Carolina Supreme Court has clearly rejected such an argument. *Compare Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707, 709 (2005) (“The provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.”; but, an order *granting* a motion to disqualify a party’s attorney is “one of those rare orders” which is directly appealable as affecting a party’s substantial rights) *with State v. Wilson*, 387 S.C. 597, 602-03 & n. 3, 693 S.E.2d 923, 926 & n. 3 (2010) (“The *denial* of a disqualification motion is not directly appealable as the ruling does not affect the merits or a party’s substantial rights, nor does it effectively determine the action, and any error in the failure to grant the motion is more amenable to correction through the remedy of a new trial.” [emphasis in original]; “[T]he policy implications present in *Hagood*, i.e., the right of a party to retain counsel of his or her choosing and the development of an attorney/client relationship, are not compelling factors when considering the disqualification of [opposing counsel].”); *see also Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707, 711 (2005) (Pleicones, J., dissenting) (“Attorney disqualification does not fall within the ambit of section 14-3-330(2)(a).”) and David B. Harrison, *Appealability of State Court’s*

---

<sup>2</sup> Notably, the Order neither determines the action, rules upon a new trial motion, nor strikes any portion of a pleading; consequently, even if this argument had merit (which Respondent denies), subsection (2) still would not apply.

*Order Granting or Denying Motion to Disqualify Attorney*, 5 A.L.R.4th 1251, § 3 (1981) (cited with approval in *Hagood*) (demonstrating that, except with respect to a split of authority in California, courts have uniformly held orders denying motions to disqualify counsel are not directly appealable).

Here, the appealed Order is not a final judgment, does not involve the merits, does not affect a substantial right of Appellants, and is simply an interlocutory Order as to which there is no right to an immediate appeal. Consequently, this Court lacks appellate jurisdiction and should dismiss the present appeal.

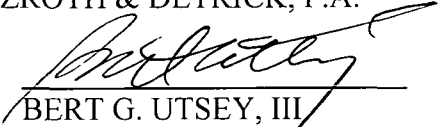
CONCLUSION

For the foregoing reasons, Respondent requests that the Court dismiss the present appeal and remand this matter to the Court of Common Pleas for Colleton County.

Respectfully submitted,

PETERS, MURDAUGH, PARKER,  
ELTZROTH & DETRICK, P.A.

BY:

  
BERT G. UTSEY, III  
123 Walter Street  
Post Office Box 1164  
Walterboro, SC 29488  
(843) 549-9544  
[butsey@pmped.com](mailto:butsey@pmped.com)

and

J. PAUL DETRICK  
P.O. Box 457  
101 Mulberry Street, East  
Hampton, SC 29924  
(803) 943-2111  
[pdetrick@pmped.com](mailto:pdetrick@pmped.com)

Attorneys for Respondent

July 6, 2012  
Walterboro, S.C.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

---

Case No. 2011-CP-15-0020

---

Ricky S. Mitchell, ..... Respondent,

v.

Marin Right of Way Service, LLC, and  
Bernardo L. Hernandez..... Appellants.

---

APPENDIX TO  
MEMORANDUM IN SUPPORT  
OF MOTION TO DISMISS APPEAL

---

The following is a list of Circuit Court Orders and other filings attached as exhibits to the Memorandum in Support of Motion to Dismiss Appeal:

1. Complaint dated January 3, 2011.
2. Motion to Disqualify dated July 22, 2011.
3. Order dated January 23, 2012.
4. Motion for Reconsideration dated March 1, 2012.
5. Order dated May 1, 2012.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 RICKY S. MITCHELL, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MARIN RIGHT OF WAY SERVICE, LLC, )  
 and BERNARDO L. HERNANDEZ, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2011-CP-15-20

COMPLAINT  
 (Jury Trial Requested)

PATRICIA C. GRANT  
 COLLETON COUNTY  
 COMMON PLEAS  
 2011 JAN -6 PM 2:55

Plaintiff alleges:

1. Plaintiff is a resident of Colleton County, South Carolina, and was so at the time the cause of action set forth herein arose.
2. Defendant Marin Right of Way Service, LLC (hereinafter, "Marin") is a domestic limited liability company with its principal place of business in Colleton County, South Carolina, and was so at the time the cause of action set forth herein arose.
3. Upon information and belief, Defendant Bernardo L. Hernandez (hereinafter, "Hernandez") is a resident of Colleton County, South Carolina, and was so at the time the cause of action set forth herein arose.
4. At all times relevant herein, Hernandez was an employee and agent of Marin acting within the course and scope of said employment.
5. On or about January 27, 2010, at approximately 7:05 a.m., Plaintiff was operating a log truck on U.S. Highway 601 in Colleton County, South Carolina.
6. At the same time, Hernandez was operating a vehicle owned by Marin, with Marin's permission, on S.C. Highway 641, approaching its intersection with U.S. Highway 601 in Colleton County, South Carolina.
7. At the intersection of S.C. Highway 641 and U.S. Highway 601, traffic on S.C. Highway 641 is governed by a stop sign.

8. At the intersection of S.C. Highway 641 and U.S. Highway 601, traffic on U.S. Highway 601 has the right of way.

9. At the time and place described above, Hernandez failed to stop fully for the stop sign governing his lane of traffic and/or failed to yield the right of way to Plaintiff's land of traffic and entered the intersection onto U.S. Highway 601 directly into Plaintiff's path of travel, causing a collision with the truck operated by Plaintiff (hereinafter, the "Collision").

10. The Collision was due to and caused directly and proximately by the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and unlawful acts, delicts and omissions of Hernandez in one or more of the following particulars:

- a. In failing to keep a proper lookout;
- b. In failing to obey the stop sign governing his lane of traffic;
- c. In failing to yield the right of way to Plaintiff;
- d. In failing to come to a complete stop at the intersection;
- e. In failing to utilize his brakes properly;
- f. In failing to maintain proper control over his motor vehicle;
- g. In failing to take adequate evasive action to avoid the Collision;
- h. In colliding with the vehicle Plaintiff was operating;
- i. In entering the intersection when Plaintiff's vehicle was approaching on another roadway so closely as to constitute an immediate hazard during the time when Hernandez would be moving across or within the intersection;
- j. In violating S.C. Code Ann. § 56-5-2310(a) (1976, as amended);
- k. In violating S.C. Code Ann. § 56-5-2330(b) (1976, as amended);
- l. In violating other laws, statutes, and ordinances of the State of South Carolina; and
- m. In failing to exercise the degree and caution that a reasonable prudent person would have executed under the circumstances then and there prevailing.

11. Marin is vicariously liable for Hernandez's negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and unlawful acts, delicts and omissions under the doctrine of *respondeat superior*.

12. The Collision was also due to and caused directly and proximately by the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and unlawful acts, delicts and omissions of Marin in entrusting its vehicle to Hernandez when it knew or should have known he was not adequately trained and qualified to operate it safely on the roadways of South Carolina.

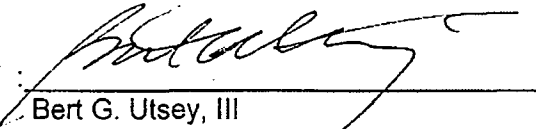
13. As a direct and proximate result of the Collision, Plaintiff sustained serious, severe, and permanent injuries from which he continues to suffer, and upon information and belief, will continue to suffer in the future.

14. As a direct and proximate result of the aforementioned negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and unlawful acts, delicts and omissions of Defendants, Plaintiff has suffered actual damages in an amount to be determined by the jury. In addition, Plaintiff is entitled to an award of punitive damages in an appropriate amount.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages, punitive damages, the costs of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER,  
ELTZROTH & DETRICK, P.A.

BY :



Bert G. Utsey, III  
123 Walter Street  
Post Office Box 1164  
Walterboro, SC 29488  
Phone: (843) 549-9544  
Fax: (843) 549-9546  
butsey@pmped.com

ATTORNEYS FOR PLAINTIFF

January 3, 2011  
Walterboro, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )  
RICKY S. MITCHELL, )  
Plaintiff, )  
vs. )  
MARIN RIGHT OF WAY SERVICE, )  
LLC, and BERNARDO L. )  
HERNANDEZ, )  
Defendants. )  


---

BERNARDO L. HERNANDEZ, )  
Third-Party Plaintiff, )  
vs. )  
THREE GEN, INC., )  
Third-Party Defendant. )  


---

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.:2011-CP-15-20

**MOTION TO DISQUALIFY BERT G.  
UTSEY, J. PAUL DETRICK AND THE  
LAW FIRM OF PETERS, MURDAUGH,  
PARKER, ELTZROTH AND DETRICK,  
P.A.**

TO: BERT G. UTSEY, III, ESQUIRE AND J. PAUL DETRICK ESQUIRE, ATTORNEYS  
FOR PLAINTIFF:

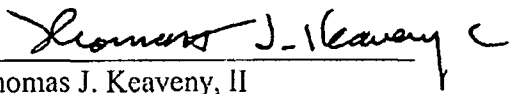
YOU WILL PLEASE TAKE NOTICE that on August 1, 2011 at 10:00 a.m. or thereafter as  
he may be heard, the undersigned will move to disqualify Mr. Utsey, Mr. Detrick and the law firm  
of Peters Murdaugh Parker Eltzroth and Detrick P.A. ("law firm") from representing Plaintiff in this  
matter. The motion will be heard at the Colleton County Courthouse.

The motion to disqualify is made pursuant to Rule 1.18 and Rule 3.7 of the South Carolina  
Rules of Professional Conduct. It is based upon the testimony of Carlos Marin which will be elicited  
at the hearing that on January 27, 2010, and thereafter, he met at length with Mr. Utsey and other  
members of his firm seeking legal advice relating to the very accident which is the subject of this

lawsuit. Under Rule 1.18 (c) counsel cannot now represent Mr. Mitchell whose interests are materially adverse to Mr. Marin. Furthermore, during those meetings, Mr. Marin gave and received information which may even have established an attorney-client relationship under Rule 1.9 so that Mr. Utsey and the law firm are disqualified from representing Plaintiff in this action under Rule 1.9 and Rule 1.10. Finally, Rule 3.7 prevents an attorney from serving as both an advocate and a witness. This may become an issue in the case and may be the reason Attorney Detrick filed a Notice of Appearance (Exhibit "A") on May 10, 2011 – 4 months after suit was filed by his law partner, Mr. Utsey.

The motion will be supported by the testimony of Carlos Marin. Application of the rules to the facts of this matter will be supported by the testimony of Mr. Michael Virzi, professor of legal ethics at the University of South Carolina, School of Law (C.V. attached as Exhibit "B").

Respectfully submitted,

  
Thomas J. Keaveny, II  
KEAVENY LAW FIRM LLC  
(S.C. Bar No. 3308)  
445 Folly Road  
Charleston, South Carolina 29412  
Telephone: 843.225.2820  
Facsimile: 843.225.2823  
Email: [tkeaveny@keavenylawfirm.com](mailto:tkeaveny@keavenylawfirm.com)

ATTORNEYS FOR DEFENDANTS  
AND THIRD-PARTY PLAINTIFF

July <sup>22<sup>nd</sup></sup>, 2011  
Charleston, South Carolina


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )  
 )  
RICKY S. MITCHELL,, )  
 )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MARIN RIGHT OF WAY SERVICE, LLC, )  
AND BERNARDO L. HERNANDEZ,, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2011-CP-15-020

NOTICE OF APPEARANCE  
OF  
J. PAUL DETRICK  
FOR PLAINTIFF

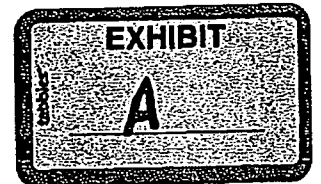
PLEASE TAKE NOTICE, that the undersigned, J. Paul Detrick, attorney with the law firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, PA, does hereby give his Notice of Appearance as co-counsel for the plaintiff, Ricky S. Mitchell, along with Bert G. Utsey, III co-counsel, and requests that copies of any future correspondences served in this action by the parties be served upon him at the address given below.

PETERS, MURDAUGH, PARKER, ELTZROTH  
& DETRICK, P.A.

BY:   
J. Paul Detrick  
Bert G. Utsey, III  
P.O. Box 457  
Hampton, SC 29924  
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

May 10, 2011  
Hampton, South Carolina



CERTIFICATE OF SERVICE

This is to certify that I, Lynn Freeman, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date mailed via the U.S. Postal Service, a true and correct copy of the within *Notice of Appearance* with first class postage prepaid to:

Thomas J. Keaveny, II, Esquire  
Keaveny Law Firm, LLC  
445 Folly Road  
Charleston, SC 29412

Pratt-Thomas Walker, P.A.  
Lindsay K. Smith-Yancey, Esquire  
Post Office Drawer 22247  
Charleston, South Carolina 29413-2247

Turner Padgett Graham & Laney, P.A.  
Britton M Hawk, Esquire  
P.O. Box 22129  
Charleston, SC 29413

PETERS, MURDAUGH, PARKER, ELTZROTH  
& DETRICK, P.A.

BY: Lynn Freeman  
Lynn Freeman

May 10, 2011  
Hampton, South Carolina

MICHAEL J. VIRZI

P.O. Box 50252

Columbia, SC 29250

michael.virzi@gmail.com

803-404-0429

**EDUCATION**

University of South Carolina School of Law, Columbia, SC

J.D., *cum laude*, May 2000

Honors:

- Order of the Coif
- Order of Wig & Robe
- Roy Webster Scholar
- Dean's List
- CALI Award, Business Corporations
- Articles Editor, *ABA Real Property, Probate and Trust Journal*

University of South Carolina, Columbia, SC

B.A., Political Science, May 1991

**LAW PRACTICE**

Michael J. Virzi, LLC, Columbia, SC

Solo practitioner (part-time), August 2006 – present

Ethics & Malpractice Consultation  
Attorney Grievances

S.C. Supreme Court's Office of the Disciplinary Counsel, Columbia, SC

Assistant Disciplinary Counsel, February 2003 – August 2006

Investigated and prosecuted lawyer misconduct and incapacity, with a concentration  
in real estate transactions, mortgage fraud, and the unauthorized practice of law  
Represented the Disciplinary Counsel in non-disciplinary legal matters

Sowell Gray Stepp & Laffitte, L.L.C., Columbia, SC

Associate Attorney, July 2001 – February 2003

Business, Commercial and Real Estate Litigation  
Bankruptcy & Creditors' Rights  
Employment Litigation

Gallivan, White & Boyd, P.A., Greenville, SC

Associate Attorney, August 2000 – July 2001

Business and Real Estate Litigation  
Bankruptcy & Creditors' Rights

**TEACHING EXPERIENCE**

University of South Carolina School of Law, Columbia, SC

Legal Writing Instructor, August 2006 – Present (adjunct 2005 – 2006)

Legal Writing I & II  
Advanced Legal Writing  
Supervised Legal Research  
Fundamentals of Law Practice & Professionalism

Midlands Technical College, Columbia, SC

Adjunct Instructor, Paralegal Degree Program, May 2003 – August 2005

Business Law I (contracts, agency)  
Business Law II (payment systems, secured transactions, corporations, partnerships, LLCs)



**PUBLICATIONS**

*Quality Control: In re Wells and the Regulation of Adverbs and Adjectives in Lawyer Advertising*, S.C. Lawyer, July 2011, at 27.

REAL ESTATE TRANSACTIONS: CASES AND MATERIALS (2d ed. 2010) (with Stephen A. Spitz).

*Who Can You Trust? How the TLGP, CDARS, FDIC and NCUSIF Affect the Safekeeping of Client Funds*, S.C. Lawyer, May 2009, at 14.

*If It Walks Like a Duck...: Ethics Advisory Opinion 06-11 & the Attorney-Client Relationship in Real Estate Transactions*, S.C. Lawyer, March 2007, at 30.

**SIGNIFICANT CASES**

*Doe Law Firm v. Richardson*, 371 S.C. 14, 636 S.E.2d 866 (2006).

*Ex Parte Watson*, 356 S.C. 432, 589 S.E.2d 760 (2003) (brief only).

**PROFESSIONAL ASSOCIATIONS**Bar:

American Bar Association	2006 – present
South Carolina Bar	2000 – present
Professional Responsibility Committee	2011 – present
Ethics Advisory Committee (Chair 2007-2010)	2003 – present
Technology Committee	2001 – 2003
S.C. Association of Ethics Counsel	2008 – present
Richland County Bar	2001 – present
North Carolina Bar (inactive since 2004)	2001 – present

Courts:

U.S.D.C., District of South Carolina	2001 – present
U.S.D.C., Western, Middle & Eastern Districts of North Carolina	2001 – present
U.S. Court of Appeals, Fourth Circuit	2002 – present

Law Enforcement:

National White Collar Crime Center	2004 – 2007
F.B.I. Multi-Jurisdictional Lending Fraud Task Force	2004 – 2006

**LECTURES & SEMINARS**

*Advertising School* (panelist), S.C. Bar & Supreme Court LEAPP Program, Dec. 15, 2010

*Ethics & Malpractice in a Real Estate Practice* (guest lecturer), Charleston School of Law, Sept. 15, 2010

*Ethics & Malpractice in a Real Estate Practice* (guest lecturer), USC School of Law, Aug. 30, 2010

*Ethics in Real Estate Transactions* (guest lecturer), Charleston School of Law, June 3, 2010

*Ethics & Malpractice in a Real Estate Practice* (guest lecturer), Charleston School of Law, May 26, 2010

**LECTURES & SEMINARS (Continued)**

- Ethics School* (panelist), S.C. Bar & Supreme Court LEAPP Program, May 14, 2010
- If I Only Had A Brain: Real Estate Ethics*, Fidelity National Annual Seminar, Feb. 26, 2010  
(For what it's worth, I did not name this one.)
- Ethics School* (panelist), S.C. Bar & Supreme Court LEAPP Program, Feb. 19, 2010
- Ethics School* (panelist), S.C. Bar & Supreme Court LEAPP Program, Oct. 15, 2009
- Recent Issues in Trust Accounting and Real Estate*, First American Fall Seminar, Oct. 9, 2009
- Ethics School* (panelist), S.C. Bar & Supreme Court LEAPP Program, June 11, 2009
- UPL in Real Estate Transactions* (guest lecturer), USC School of Law, April 1, 2009
- Ethics School* (panelist), S.C. Bar & Supreme Court LEAPP Program, Feb. 12, 2009
- Ethics in Real Estate Transactions* (guest lecturer), Charleston School of Law, Feb. 11, 2009
- Classroom Ethos: The Trophy Case and Beyond*, NC/SC Legal Writing Conference, May 21, 2008
- Guided Meditation for Getting in Touch with Your Inner Ethics Counsel*, S.C. Bar, Apr. 11, 2008
- Ethics and Beyond: Hot Topics in Foreclosure*, S.C. Masters-in-Equity, Mar. 14, 2008
- Ethics in Real Estate Transactions* (guest lecturer), USC School of Law, Feb. 27, 2008
- The Attorney Grievance Process, Part II* (guest lecturer), USC School of Law, Feb. 13, 2008
- The Attorney Grievance Process, Part I* (guest lecturer), USC School of Law, Feb. 6, 2008
- Hot Topics in Ethics for Government Lawyers*, SCAC Fall Seminar, Dec. 7, 2007
- Practical Tips for Solo and Small-Firm Lawyers*, Lexington County Bar, Dec. 5, 2007
- Ethics Update for Real Estate Lawyers*, Stewart Title Fall Seminar, Nov. 2, 2007
- Ethics Issues in Housing Law and Beyond*, S.C. Appleseed Legal Justice Center, Oct. 19, 2007
- Ethics in Real Estate Transactions* (guest lecturer), USC School of Law, Oct. 15, 2007
- Ethics Impact of The 2006 Property Tax Reform Act*, S.C. Bar, Aug. 24, 2007
- Real Estate Ethics* (guest lecturer), USC School of Law, Apr. 9, 2007
- Ethics in Real Estate Transactions* (guest lecturer), USC School of Law, Mar. 23, 2007
- The Attorney Discipline Process* (guest lecturer), USC School of Law, Feb. 29, 2007
- Legal Ethics of Non-Profit Corporations*, S.C. Bar, Feb. 9, 2007
- Real Estate Fraud*, Charleston County Real Estate Section Meeting, Dec. 8, 2006
- ODC's Top Ten List*, S.C. Bar Solo & Small Firm Section Conference, Oct. 6, 2006
- Avoiding Discipline in a Real Estate Practice*, SCALA Ethics Seminar, July 27, 2006
- A Closing Lawyer's Ethical Obligations* (panelist), S.C. Bar Real Estate Section Update, May 12, 2006
- Ethics Rules & Real Estate Practice* (panelist), S.C. Bar Convention, Jan. 27, 2006
- UPL Issues in Real Estate Closings*, Richland County Bar Annual Ethics Seminar, Nov. 4, 2005
- Real Estate Fraud & Property Flips*, PLTA Fall Seminar, Sept. 13, 2005

**LECTURES & SEMINARS (Continued)**

- Ethics in Real Estate Transactions*, PLTA Spring Convention, May 13, 2005
- Pitfalls of a Real Estate Practice* (panelist), S.C. Bar Convention, Jan. 21, 2005
- The Revised Lawyer's Oath* (panelist), Office of the Attorney General, Aug. 20, 2004
- Professionalism in the Law* (panelist), USC School of Law, Aug. 17, 2004
- Professionalism in the Law* (panelist), USC School of Law, Aug. 19, 2003
- Basics of Civil Litigation*, Half-Moon Seminars, Apr. 25, 2003
- Racial Discrimination & the 14<sup>th</sup> Amendment* (guest lecturer), Columbia College, Apr. 9, 2003

**PRESS**

- Diana Smith, *E-mail Marketing Presents Opportunities for Firms but Perils if Done Wrong*, S.C. Law. Weekly, Oct. 4, 2010.
- Tim Smith, *High Court Puts Lawyers on Notice about Relationships*, Greenville (S.C.) News, Sept. 15, 2010.
- Stephanie Francis Ward, *Grade Anxiety*, ABA Journal, Feb. 2010, at 52.
- Adam Parker, *Complaint Filed in Diocese Settlement Case*, Post & Courier (Charleston, S.C.), Feb. 26, 2009.
- Sandy Hodson, *After Mortgage Fraud Cases, Federal Leaders Urge Caution*, Augusta Chronicle, Dec. 28, 2008.
- Bess Battle, *Battle Zone*, S.C. Law. Weekly, Sept. 1, 2008, at 6.
- Gregory Froom, *Attorneys May Threaten Criminal Action While Trying to Collect on Bad Checks*, S.C. Law. Weekly, Sept. 24, 2007, at 1.
- Kristy Eppley Rupon, *Lawyers Required to Oversee Refinancing*, The State (Columbia, S.C.), Nov. 6, 2006, at H23.
- Michael Dayton, *Disbursement of Closing Funds Requires Attorney Supervision*, S.C. Law. Weekly, Oct. 30, 2006, at 1.
- Gregory Froom, *Must Lawyers Disburse?*, S.C. Law. Weekly, Oct. 16, 2006, at 1.

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

RICKY S. MITCHELL,  
Plaintiff,

v.

MARIN RIGHT OF WAY SERVICE, LLC,  
AND BERNANDO L. HERNANDEZ,  
Defendants.

BERNARDO L. HERNANDEZ,  
Third-Party Plaintiff,

v.

THREE-GEN, INC.,  
Third-Party Defendant.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2011-CP-15-0020

ORDER DENYING DEFENDANT  
MARIN RIGHT OF WAY SERVICE,  
LLC'S MOTION TO DISQUALIFY  
PLAINTIFF'S COUNSEL

PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS  
2012 JAN 30 PM 3:18

#1  
Pmb

This matter came before the Court on December 19, 2011 pursuant to Defendant Marin Right of Way Service, LLC's Motion to Disqualify Plaintiff's Counsel. Present and appearing at the hearing was Paul Detrick, Esq. for the Plaintiff and Tom Keaveny, Esq. for the Defendant Marin Right of Way Service, LLC (hereinafter "Marin"). Based on the evidence presented by both parties at the hearing for this matter, the arguments of both parties, and the written submissions of both parties, this Court denies Marin's Motion to Disqualify Plaintiff's Counsel.

FACTS

On January 27, 2010, an automobile collision occurred involving a Marin-owned van driven by Marin employee, Defendant/Third-Party Plaintiff Bernardo L. Hernandez (hereinafter "Hernandez"). The van was occupied by seven other employees of Marin, three of whom were killed as a result of the collision. The other vehicle was a truck-trailer owned by Third-Party Defendant Three Gen. Inc. and operated by Plaintiff Ricky Mitchell (hereinafter "Mitchell").

Mitchell was also injured. The MAIT team of the South Carolina Highway Patrol investigated the accident.

Immediately following the incident, Mr. Marin, owner of Marin, came to Mr. Utsey's office in Walterboro on the morning of the collision and met with Mr. Utsey. There is considerable dispute among the parties about several details of the meeting, including whether Mr. Utsey informed Mr. Marin that he would not be representing him. They did discuss the collision and the fact that Marin's employees and their families may need representation.

Later that same day, the parties agree that with Mr. Marin's assistance, Mr. Utsey met with the father-in-law of one of the deceased employees regarding representing his estate on a wrongful death claim. The parties agree also that Mr. Utsey and Mr. Marin met again two days later at Mr. Utsey's office with Johnny Parker, Dorcas Tuten, Mr. Marin's brother, and a mutual acquaintance of Mr. Marin and Mr. Utsey present. Mr. Marin and Mr. Utsey had no further contacts after the January 29, 2010 meeting. Ultimately, Mr. Utsey and his firm (PMPED) did not represent any victims of the January 27 collision or their family members.

Mitchell retained PMPED on March 3, 2010 to represent him with respect to his workers' compensation claim, and he later retained PMPED to represent him in this action.

This action was filed on January 6, 2011 by Mr. Utsey on behalf of Mitchell. Mr. Detrick with PMPED filed a notice of appearance on May 12, 2011. Mr. Marin was served on January 13, 2011.

#### LEGAL ANALYSIS

The issues raised by Defendants' motion are governed by the South Carolina Rules of Professional Conduct (hereinafter "the Rules"), namely Rules 1.9, 1.10 and 1.18. Rule 1.9(a) states:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Rule 407, SCACR, RPC 1.9. Rule 1.10 states: "While lawyers are associated in a firm, none of them shall knowingly represent a client when any of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9" except in certain circumstances which are not applicable here. Rule 1.18 applies to circumstances where a lawyer represents a party adverse to

#2  
PMB

a former "prospective client" who has previously consulted with the lawyer about the now adverse matter but without ultimately creating an attorney-client relationship. This rule reads in pertinent part:

- (a) A person with whom a lawyer discusses the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client only when there is a reasonable expectation that the lawyer is likely to form the relationship.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

#3  
PMB

Rule 407. SCACR. RPC 1.18. Rule 1.18 hinges on the idea that there must be a "reasonable expectation that the lawyer is likely to form the relationship."


There was never a contract of representation formally entered into by Mr. Marin and Mr. Utsey or by Mr. Marin and PMPED. As to whether Mr. Marin believed one had been entered into or that Mr. Utsey was likely to form one, that is a factual dispute and the information provided in the affidavits, discovery responses, other documentation, and the testimony during the hearing must be examined.

Thus, while these rules provide guidance, ultimately, the Court has to weigh the credibility of the two fact witnesses, Mr. Marin and Mr. Utsey. Since their testimonies are in opposition to each other, the Court turns to (1) the letter of May 31, 2011 from Mr. Keaveny that states that Mr. Marin knew there was no relationship and (2) the affidavit of Mr. Parker which attests that Mr. Marin was informed that they would not be representing him and that they would be making claims against his company and his workers' compensation carrier. Based on these two documents, the Court finds that no client-lawyer relationship was formed. The Court believes this is a miscommunication, possibly due to the language barrier since English is Mr.

Marin's second language, and this Court had the opportunity to observe the witnesses and listen to their testimony during the hearing. In no event, however, does this Court believe based on the writings submitted to this Court that a lawyer-client relationship was formed.

CONCLUSION

Accordingly, this Court respectfully denies the Motion to Disqualify Plaintiff's Counsel.  
IT IS SO ORDERED.

  
Perry M. Buckner  
Presiding Judge, Fourteenth Judicial Circuit

January 23, 2012  
Walterboro, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )  
RICKY S. MITCHELL, )  
Plaintiff, )  
vs. )  
MARIN RIGHT OF WAY SERVICE, )  
LLC, and BERNARDO L. )  
HERNANDEZ, )  
Defendants. )  


---

BERNARDO L. HERNANDEZ, )  
Third-Party Plaintiff, )  
vs. )  
THREE GEN, INC., )  
Third-Party Defendant. )  


---

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.:2011-CP-15-20

**NOTICE OF MOTION AND MOTION  
FOR RECONSIDERATION OF  
DEFENDANTS' MOTION TO  
DISQUALIFY COUNSEL**

TO: BERT G. UTSEY, III, AND J. PAUL DETRICK, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants Marin Right of Way Service, LLC, and Bernardo L. Hernandez (hereinafter "Defendants") will, ten (10) days from the date of service of this motion or at such time as the Court may determine, move the Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider its ruling (*i.e.*, alter or amend its Order) on Defendants' Motion to Disqualify Counsel, and to grant the same.

The Defendants' original motion is based on Rule 1.9, 1.10 and 1.18 of the South Carolina Rules of Professional Conduct. On January 30, 2012, Colleton County Clerk of Court filed the

Court's Order Denying Defendant Marin Right of Way Service LLC's Motion to Disqualify Plaintiff's Counsel. Defendants received the Court's order via email from Colleton County Clerk of Court on February 21, 2012. Defendants ask the Court to reconsider Defendants' motion because the Court's order does not appear to address Defendants' Rule 1.18 claim that Plaintiff's counsel is disqualified because Defendants were potential clients. Furthermore, the Court appears not to have appreciated that the motion extended to matters filed against Marin's agents and servants (i.e., Hernandez) as well.

This motion is based on the South Carolina Rules of Civil Procedure, the memorandum of law submitted with this motion, previous memoranda of law submitted to the court, previous oral argument and evidence which was presented at the hearing, and the proposed order which was previously submitted.

KEAVENY LAW FIRM LLC



Thomas J. Keaveny, II (S.C. Bar No. 3308)

Matthew S. Byzet (S.C. Bar No. 100035)

1634 Ashley River Road

Charleston, South Carolina 29407

Telephone: 843.225.2820

Facsimile: 843.225.2823

Email: [tkeaveny@keavenylawfirm.com](mailto:tkeaveny@keavenylawfirm.com)

ATTORNEYS FOR DEFENDANTS AND

THIRD-PARTY PLAINTIFF

March 1, 2012  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2011-CP-15-020

RICKY S. MITCHELL, )  
Plaintiff, )

v. )

MARIN RIGHT OF WAY SERVICE, LLC, )  
and BERNARDO L. HERNANDEZ, )  
Defendants. )

ORDER

BERNARDO L. HERNANDEZ, )  
Third-Party Plaintiff, )

v. )

THREE GEN, INC., )  
Third-Party Defendant. )

PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS  
2012 MAY -7 PM 1:28

#1  
PMB

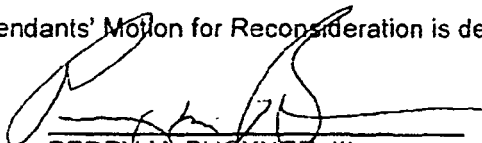
This matter is before the Court on a Rule 59(e), SCRCP, Motion for Reconsideration filed by Defendants Marin Right of Way Service, LLC (hereinafter, "Marin") and Bernardo Hernandez (hereinafter, "Hernandez"). Defendants contend the Court's Order dated January 23, 2012, "failed to address Defendants' Rule 1.18 claim that Plaintiffs counsel is disqualified because Defendants were potential clients" and "appear[ed] not to have appreciated that the motion extended to matters filed against Marin's agents and servants (i.e., Hernandez) as well." (Memorandum in Support of Motion for Reconsideration, p. 2).

I have again reviewed all matters related to Defendants' Motion to Disqualify Plaintiff's attorneys, Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A. (hereinafter, "PMPED"). I am disposing of the Motion for Reconsideration based on the record and the briefs, without the necessity of a hearing, as authorized by *Pollard v. City of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

I find there is no factual support for Hernandez's claim he formed an attorney-client relationship with PMPED; therefore, South Carolina Rule of Professional Conduct (hereinafter, "RPC") 1.9 does not provide a basis for disqualification of PMPED.

I also find that neither Defendant was a prospective client of PMPED as contemplated by RPC 1.18 and that neither Defendant provided to PMPED any information which could be significantly harmful to him or it in this matter. Therefore, RPC 1.18 does not provide a basis for disqualification of PMPED.

IT IS THEREFORE ORDERED that Defendants' Motion for Reconsideration is denied.

  
PERRY M. BUCKNER, III  
JUDGE  
FOURTEENTH JUDICIAL CIRCUIT

May 1, 2012  
Walterboro, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

---

Case No. 2011-CP-15-0020

---

Ricky S. Mitchell ..... Respondent,

v.

Marin Right of Way Service, LLC, and  
Bernardo L. Hernandez ..... Appellants.

---

PROOF OF SERVICE

---

I certify that this day I served a true and correct copy of Respondent's Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal upon all parties herein by mailing same via U.S. First Class Mail, postage prepaid, addressed to counsel of record

Thomas J. Keaveny, II, Esquire  
Matthew S. Byzet, Esquire  
Keaveny Law Firm, LLC  
1634 Ashley River Road  
Charleston, SC 29407  
Attorneys for Appellants

Britton Mason Hawk, Esquire  
Turner Padgett Graham & Laney, PA  
40 Calhoun Street, Suite 200  
Charleston, SC 29413

Lindsay Smith-Yancey, Esquire  
Pratt-Thomas Walker, PA  
Post Office Drawer 22247  
Charleston, SC 29413-2247

PETERS, MURDAUGH, PARKER,  
ELTZROTH & DETRICK, P.A.

BY:



---

Bert G. Utsey, III  
123 S. Walter Street  
Post Office Box 1164  
Walterboro, SC 29488  
Phone: (843) 549-9544  
Fax: (843) 549-9546  
butsey@pmped.com

July 6, 2012  
Walterboro, South Carolina

64797

LAW OFFICES  
**PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK**  
PROFESSIONAL ASSOCIATION

JOHN E. PARKER  
J. PAUL DETRICK  
DANIEL E. HENDERSON  
MARK D. BALL  
RANDOLPH MURDAUGH, IV  
RONNIE L. CROSBY  
R. ALEXANDER MURDAUGH  
BERT G. UTSEY, III  
RANDOLPH MURDAUGH, III  
GRAHAME E. HOLMES  
LEE D. COPE  
MATTHEW V. CREECH  
LEAGUE B. CREECH  
STEVEN D. MURDAUGH  
WILLIAM F. BARNES, III

123 WALTER STREET  
POST OFFICE BOX 1164  
WALTERBORO, SOUTH CAROLINA 29488  
TELEPHONE: (843) 549-9544  
TOLL FREE: (866) 943-2113  
FAX: (843) 549-9546  
WWW.PMPED.COM

RANDOLPH MURDAUGH, SR.  
(1887-1940)  
RANDOLPH MURDAUGH, JR.  
(1915-1995)  
J. ROBERT PETERS, JR.  
(1927-2008)

OTHER OFFICES:  
101 MULBERRY STREET EAST  
POST OFFICE BOX 457  
HAMPTON, SC 29924  
TELEPHONE (803) 943-2111  
FAX (803) 943-3943

110 WEST WILSON STREET  
POST OFFICE BOX 2500  
RIDGELAND, SC 29936-2500  
TELEPHONE: (843) 726-6131  
FAX: (843) 726-6057

CLYDE A. ELTZROTH, JR.  
(INACTIVE)

July 6, 2012

**RECEIVED**

JUL 09 2012

**SC Court of Appeals**

Email: butsey@pmped.com

The Honorable Jeanette Barber  
S.C. Court of Appeals Clerk of Court  
Post Office Box 11629  
Columbia, SC 29211-1629

*Re: Ricky S. Mitchell v. Marin Right of Way Service, LLC, et al*  
*Civil Action No.: 2011-CP-15-020*  
*Appeal from Colleton County*

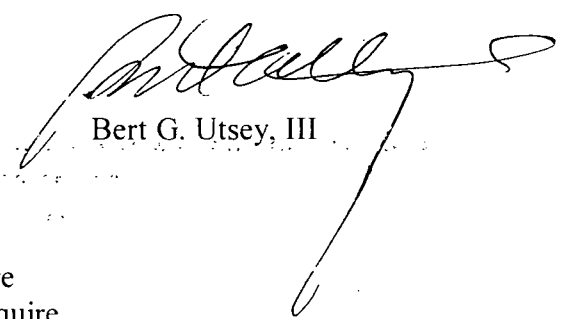
Dear Ms. Barber:

Enclosed please find original and seven copies of Respondent's Motion to Dismiss Appeal in the above-referenced matter, together with Proof of Service and this firm's check in payment of the applicable filing fee. Please file the originals and return one clocked copy of the motion and proof of service to me in the provided self-addressed stamped envelope for my file.

By copy to counsel, I am serving the enclosed motion upon all parties.

Thank you in advance for your kind assistance with this request. If you have any concerns regarding the same, please do not hesitate to contact me.

Sincerely,



Bert G. Utsey, III

BGU,III/hd  
Enclosures

cc: Thomas J. Keaveny, II, Esquire  
Lindsay K. Smith-Yancey, Esquire  
Britton M Hawk, Esquire  
J. Paul Detrick, Esquire