IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Presiding Judge

Case Number: 2013-CP-23-1833
Appellate Case No. 2013-001645

D&C Builders, Inc.....Appellant,

v.

Richard M. Buckley and Wells Fargo National Association, Defendants,
And Richard M. Buckley, Third-Party Plaintiff,
v.
Scott Dodenhoff, Third-Party Defendant

of whom:

Richard M. Buckley.....Respondent,

FINAL REPLY BRIEF OF APPELLANT

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SUMMARY

Regardless of how hard Respondent's and counsel for Respondent work to skew the facts or shift responsibility, they cannot escape the plain language of the Rules of Professional Conduct or that the representation of Respondent by the Kenison Law Firm is directly contradictory to those Rules.

From a factual standpoint, Respondent's counsel clearly admits that it was aware of its prior representation by the Kenison Firm of Appellant prior to undertaking representation of Respondent. (Respondent's Brief, p. 11, R. p. 111 ¶ 3, p. 116 ¶ 2, p. 119 ¶2). Sifting through Respondent's lengthy statement of alleged facts, it is clearly noticeable that Appellant was never contacted about consenting to the representation as required by Rule 1.9(a). Rule 1.9, RPC, Rule 407, SCACR.

Respondent does not challenge that the Kenison Firm was representing Appellant ***during the exact time*** that Appellant was performing the very construction work for Respondent at issue in this action. However, Respondent maintains that such representation does not preclude the Kenison Firm from representing Respondent ***UNLESS*** Appellant can prove it provided confidential information to the law firm that could be used against it in this case.

Respondents seek for the Court to view this situation as a "procedural" issue and place the burden of proof on the former client, yet fails to provide a single citation of legal authority from any jurisdiction for this position. The reason for this failure is quite simple; there is no authority for this position because it is contrary to the Rules of

Professional Conduct, the protection of the client and the fair administration of justice in this and every other jurisdiction.

The Kenison Firm made a mistake in undertaking the representation of Respondent in this matter without contacting Appellant first. Rather than admit the mistake, Respondent's counsel compounded that error by successfully arguing to the Circuit Court that the burden of proof was on their former client to prove them wrong. However, as stated in Respondent's brief, not only the Kenison Firm, but other attorneys they consulted with (Respondent's Brief, p. 2. lines 7-9, p. 12, lines 20-22, R. p. 142, lines 17-21, p. 112 ¶ 6, p. 120-121 ¶ 6), the Circuit Court, as well as the "different forums" Appellant has raised this same issue (See Respondent's Brief, p. 15, lines 5-6), all agreed with the twisted logic contrary to the language of the Rules that a former client must "prove" the possession of specific confidential information to justify disqualification.

The absolute girth of authority contained herein and in Appellant's Brief demonstrate that Respondent and the Kenison Firm's position is contrary to the clear ethical standards set by the Rules of Professional Conduct and contrary to the fair administration of justice.

ARGUMENT

I. Respondent's Request and the Circuit Court's Order for Appellant to provide specific confidential information to substantiate Appellant's Request for Disqualification is directly contrary to the Rules of Professional Conduct.

In its argument, Respondent attempts to distance itself from this error in judgment by asserting that this "narrow issue involves an instruction from the lower court that was never requested by Respondent." (Respondent Brief, p. 15). Unfortunately, the clear evidence in the Record and most telling in Respondent's Counsel's own words show that Respondent was requesting at every opportunity that the Appellant be made to provide specific confidential information to support disqualification.

In support of Respondent's position, three members of the South Carolina Bar and the Kenison Firm, which was representing Appellant in a similar matter while the contract between Appellant and Respondent was being performed, filed ***sworn affidavits*** that they are "unaware of" or "do not remember" any confidential information provided by Appellant to them in connection with their prior representation. (R. p. 114, ¶ 13, p. 117, ¶ 4, p. 120, ¶ 4).

Based on these affidavits, Respondent argued to the Circuit Court,

> **Again, I can't stress enough, even though we've asked on a number of occasions and as you can see in the affidavit that Mr. Dodenhoff provided, there's no specifics that have been provided to us or the Court now regarding any actually confidential [information] that would potentially create a conflict.**

(R. p. 146, line 22 – p. 147, line 2)(Emphasis added). (See also R. pp. 65-69).

Respondent goes even further in its response to Appellant's Motion to Reconsider, arguing,

> **Mr. Martin cites that portion of comment 3 to Rule 1.9 of the South Carolina Rules of Professional Conduct which states that a former client *is not required* to reveal the purported confidential information. In support of his Motion to Reconsider, Mr. Martin states that his client "will be forced to disclose confidential information to Defense Counsel *that may not have been previously disclosed to Defense Counsel in the prior representation.*" This admission coupled with the clear desire of Plaintiff to not provide any of the purported confidential information all the while crying the (*potential*) existence of confidential information, presents the troubling scenario where the Plaintiff is attempting to use Rule 1.9 not as a shield but as a sword. This was surely not the intention behind the Rule.**
>
> **It remains our position that the arguments and facts presented to the court show: ... (2) the existence of absolutely no specific confidential information learned in the first case such that there is no confidential information in the possession of Defendant's counsel that would be, or could be, of significance in the second case; and (3) Defendant's counsel will not be called on in this case to use against the Plaintiff any knowledge or information acquired by Defendant's counsel in the prior case that would injuriously affect the Plaintiff. Despite this clarity and despite the Court giving the Plaintiff the opportunity to produce anything to counter it, the Plaintiff has made it abundantly clear to the Court that it would rather assert what it argues is his right not to produce anything, including what he is alleging is *possibly* confidential information.**

(R. pp. 246 - 247). (Emphasis added).

Clearly, Respondent interprets Comment 3 to Rule 1.9 as requiring the former client to choose between providing the confidential information alleged in possession of former counsel to support disqualification or not be able to obtain disqualification. Respondent offers no South Carolina authority to support this position is what was intended by the rules.

Courts in other jurisdictions, however, unanimously agree that confidential information must be protected, particularly in disqualification situations. The most similar case to the present matter is the case of Foulke v. Knuck, 784 P.2d 723, 162 Ariz. 517 (Ariz.App.Div. 2 1989). In Foulke, the attorney to be disqualified made the exact

same claims as the Kenison Firm that no confidential information had been obtained except what is now publicly known. In response the Court stated that this:

> **...contention fails to recognize the mandatory nature of ER 1.9(a). The rule does not require that confidences and secrets be divulged in order for a conflict to exist or for disqualification to be proper. State v. Allen, 539 So.2d 1232, 1234-35, (La. 1989); see also Arkansas v. Dean Foods Products Co., 605 F.2d 380, 383 (8th Cir. 1979); United States v. Kitchin, 592 F.2d 900, 904 (5th Cir.), cert. denied, 444 U.S.843, 100 S.Ct 86, 62 L.Ed.2d 56 (1979). Regardless of what was communicated during the representation of the former client, the rule prohibits subsequent representation of an individual whose interests are substantially adverse to those of the former client.**

Id. at 522, P.2d at 728. (citing T.C. Theatre Corp. v. Warner Brothers Pictures, Inc., 113 F.Supp. 265. 268-69 (S.D.N.Y. 1953)). The Court elaborated by holding:

> **The former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or cause of action wherein the attorney previously represented him, the former client. *The Court will assume that during the course of the former representation confidences were disclosed to the attorney* bearing on the subject matter of the representation. It will not inquire into their nature and extent. *Only in this manner can the lawyer's duty of absolute fidelity be enforced and the spirit of the rule relating to privileged communications be maintained.***

Foulke at 522, P.2d at 728 (emphasis added). See also Cord v. Smith, 338 F.2d 516, 524-25, (9th Cir. 1964); Matter of Evans, 113 Ariz. 458, 462, 556 P.2d 792, 796 (1976).

The Washington Court of Appeals analyzed existing cases on the issue and stated:

> **The plain language of RPC 1.9 indicates *actual proof of disclosure of confidential information is not necessary* if the matters are substantially related. The weight of authority from other jurisdictions similarly interprets the rule as not requiring proof of disclosure of confidential information.**

Teja v. Saran, 68 Wn.App. 793, 846 P.2d 1375 (Wash.App. Div. 1 1993)(emphasis added)(citing Foulke v. Knuck, 162 Ariz. 517, 522, 784 P.2d 723, 728 (1989); Brent v.

Smathers, 529 So.2d 1267 (Fla.Dist.Ct.App. 1988); United States ex rel. Lord Elec. Co. v. Titan P. Constr. Corp., 637 F.Supp. 1556 (W.D.Wash. 1986); Junger Util. & Paving Co. v. Myers, 578 So.2d 1117 (Fla.Dist.Ct.App. 1989); Martindale v. Richmond, 301 Ark. 167, 782 S.W.2d 582, 584 (1990); Oxford Dev. Minn., Inc. v. Ramsey, 428 N.W.2d 434 (Minn.Ct.App. 1988); Reading Anthracite Co. v. Lehigh Coal & Nav. Co., 771 F.Supp. 113 (E.D.Pa. 1991); Green v. Montgomery Cy., Ala., 784 F.Supp. 841 (M.D.Ala. 1992).

North Carolina follows this rationale as well. Under Cannon 4 that requires an attorney to preserve the Confidences and Secrets of a client, EC4-4 states:

> **The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge....**

Lowder v. All Star Mills, Inc., 60 N.C.App. 275, 280, 300 S.E.2d 230, 233 (N.C.App. 1983). Interpreting this Cannon, the Lowder Court further held:

> **It is not necessary to show the attorney received confidential information. The ethical duty of an attorney under EC4-4 is broader than the attorney-client evidentiary privilege.**

Id. at 282, S.E.2d at 234.

The Court in Arkansas v. Dean Foods summed it up best when it stated:

> **To compel the client to show, in addition to establishing that the subject of the present adverse representation is related to the former, the actual confidential matters previously entrusted to the attorney and their possible value to the present client would tear aside the protective cloak drawn about the lawyer-client relationship. For the Court to probe further and sift the confidences in fact revealed would require the disclosure of the very matters intended to be protected by the rule (protecting client confidences).**

Dean Foods, 605 F.2d at 383.

The attorney-client relationship, both current and former, are of such importance that maintaining confidentiality and obligations to all clients is necessary for clients to trust their attorneys not to reveal confidential information and to never use information they obtained from the client against that client. When an attorney chooses to change sides and represent someone against a former client, the interests of justice are not served when the attorney can simply claim "I don't remember anything confidential" or "I didn't receive any confidential information" and demand proof from the client. Such a requirement on the former client defeats the very purpose of the ethical rules and violates the protection of confidentiality upon which all clients rely in their relationship with attorneys.

Further proof of the importance of maintaining the confidential nature of attorney-client communication is the manner in which Rule 1.9 requires the Court to assess disqualification based on cases being "substantially related." Comment 3 provides in no uncertain terms:

> **Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a *substantial risk* that confidential factual information *as would normally* have been obtained in the prior representation would materially advance the client's position in the subsequent matter.**

Rule 1.9 Cmmt. 3, RPC, Rule 407, SCACR (Emphasis added).

There is no better example than the facts of the present situation. Both the TMKG case and the Buckley case involve the collection and accounting of money. The Kenison Firm obtained financial information from Appellant in the TMKG case and then turned around in the Buckley case and alleged Appellant was **"insolvent prior to and/or**

during construction of the Project" (R. p. 51, ¶117) and **"grossly undercapitalized prior to and during construction of the Project."** (R. p. 51, ¶118, p. 67, ¶20).

The Supreme Court confirmed that examining a potential conflict prospectively is the test in holding in Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996) that the standard for "substantially related" is:

> **...whether the affected lawyer "*would have or reasonably could have learned* confidential information in the first representation that would be of significance in the second."**

Id. at 315, S.E.2d at 429.

But not only do these members of the bar have a skewed interpretation of the Rules of Professional conduct in this situation, but the Circuit Court either does not understand the rule or does not agree with the rule as it found it could not make a determination of disqualification without hearing the alleged confidential information and Respondent having the opportunity to refute its confidentiality. The Circuit Court stated

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

(R. p. 180, lines 17-21). The Circuit Court also stated

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

(R. p. 181, lines 19-24).

With no other alternative, Appellant appealed the Order to obtain review by this Court ***and*** clarification for the bench and the bar as to whether a former client can be

forced to reveal such confidential information to support disqualification as the Respondent argued. Only now, in the face of overwhelming legal authority to the contrary, is Respondent is willing to "consent to the relief requested" but continues to refuse to admit that Respondent's position or the Circuit Court was in error.

"This court has a duty to maintain the highest ethical standards of professional conduct to insure and preserve trust in the integrity of the bar." H&C Corporation, Inc. v. Puka, No. 4:12-cv-00013-RBH , Lawyers Weekly No. 002-175-13, 4 pp. (R. Bryan Harwell, J.)(D.S.C. October 11, 2013). The Puka Court, citing Donaldson v. City of Walterboro Police Dept., No. 2:06-cv-02492-PMD, 2008 WL 906707 (D.S.C. March 31, 2008), went on to hold:

> **As noted by Judge Duffy in Donaldson, "the court acknowledges that granting this Motion to Disqualify deprives the Plaintiff of his chosen counsel and increases the length of time this case will remain pending. *However, the court is mindful of its responsibility to uphold the South Carolina Rules of Professional Conduct...*"**

Puka, at p. 4 (citing Donaldson 2008 WL at *4)(emphasis added).

As the guiding principles upon which the integrity of the legal profession is maintained, it is clear that both the bench and the bar need direction and clarification on how to interpret the Rules of Professional Conduct in this situation. To remand the case back to the Circuit Court without clear direction would be contrary to the obligation previously established by the South Carolina Supreme Court that "this Court bears the ultimate responsibility for maintaining judicial integrity and the high standards of professional conduct among the members of the bar." State v. Quattlebaum, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (S.C. 2000).

II. The Circuit Court's refusal to rule on disqualification without proof by the Appellant of the possession of specific confidential information by the Kenison Firm is a decision that affects a substantial right under S.C. Code § 14-3-330(2) for which this Court can and should review.

Respondent contends that the Circuit Court did not rule on the issue of disqualification and therefore, the issue of disqualification cannot be reviewed by this Court. In support of this position, Respondent claims that this case is most analogous to Enersys Delaware, Inc. v. Hopkins, 401 S.C. 615, 738 S.E.2d (2013) because that case dealt with the denial of a motion to disqualify and the Court found in that case that an order denying a motion to disqualify was not an order affecting a substantial right. Respondent further argues this case doesn't rise even to the level of Enersys because that case at least involved a dispositive order denying the motion to disqualify and there is no such dispositive order in this appeal.

Appellant does not dispute the holding of Enersys, however, just like the Court's opposite holding in Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (S.C. 2005) that an order granting a motion to disqualify affects a substantial right and is immediately appealable under S.C. Code § 14-3-330(2), neither holding is directly applicable in the present case which presents an issue of first impression for this Court.

In the present case, the Circuit Court ***refused to consider*** the motion to disqualify **without** the disclosure of specific confidential information allegedly provided in protected attorney-client communications to the very attorneys sought to be disqualified. This requirement is in direct violation of the Rules of Professional Conduct, is contrary to the Supreme Court's holding in Townsend as well as the overwhelming authority from other jurisdictions. Most importantly, however, a requirement to disclose such

information significantly affects the substantial rights clients have in maintaining the confidential nature of attorney-client communications and the fair administration of justice.

Respondent points out in the Enersys decision that the Court focused on whether the denial of a motion to disqualify affects a substantial right and contends the present case is similar because like Enersys the Appellant contends that Respondent's attorneys learned confidences in its prior representation which could be used in the current representation of Respondent. A glaring difference between the cases, however, is that in Enersys, the prior representation was ***seven (7) to nine (9) years*** before the alleged conflicting representation. Id. at 615, S.E.2d at 478-479. The time difference before changing sides by the Kenison Firm in this matter was ***less than one (1) year***. (R. p. 145, lines 10 – 12). Information is far more likely to be recalled over such a short period as compared to even seven years. A similar concern obviously also existed in Hagood where the granting of disqualification was held to be immediately appealable. The important difference in these two cases from the one at hand is that in both Enersys and Hagood, the Circuit Court judge made his ruling to grant or deny disqualification based on the applicable standard under the Rules of Professional Conduct.

In Enersys, the Court recognized that the Circuit Court used the appropriate "substantially related" assessment of both representations as the basis for denying disqualification, stating

> **The circuit court denied the motion [to disqualify] concluding that Harper's previous assistance in developing Enersys' litigation strategy was insufficient grounds upon which to disqualify him due to the *dissimilarities* of his previous representations and the current suit. (Emphasis added).**

Id. at 615, S.E.2d at 479. Harper had previously represented Enersys in five employment related lawsuits as compared to the breach of contract action Harper was now pursuing against Enersys on behalf of Hopkins. Id. at 615, S.E.2d at 478-479.

In Hagood, the trial Court used Rule 3.7 of the Rules of Professional Conduct which prohibits an attorney from representing a client when the attorney will be a witness in the proceeding to disqualify an attorney where a full-time employee of the attorney would be a witness rather than the attorney.

> **The circuit court concluded it would be improper under the Rules of Professional Conduct for an investigator or accident reconstruction expert who works as a full-time employee for Petitioner's Attorney to testify on Petitioner's behalf at trial.**

Id. at S.E.2d 710. The Court analyzed the matter as a case of first impression just like the present case, and found that disqualifying a party's attorney affects a substantial right. Id. The Court went on to hold specifically

> **The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Moreover, the right to be represented by ones preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.**

Id.

Respondent's position is that no substantial right is affected in this case based on the analysis in Enersys, however, the only substantial right examined in Enersys was the refusal to disqualify an attorney. Specific substantial rights Appellant contends are affected is the right to maintain confidential information relayed through confidential attorney-client communications and the right not to be forced to disclose such communications in order to substantiate disqualification. Such forced disclosure of

confidential information from a client must certainly be viewed equally if not more substantial than those examined by the Court in Hagood in that such an order will significantly impact the attorney-client relationship and overall litigation, from which no appeal could undo.

In preserving client confidences, a lawyer serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private. (Preamble ¶8, RPC, Rule 407, SCACR & Rule 1.6 Cmmt. 2, RPC, Rule 407, SCACR). Rule 1.6(a) more specifically addresses this concept by requiring that "a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent." Rule 1.6(a), RPC, Rule 407, SCACR. "A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation." Rule 1.6 Cmmt. 2, RPC, Rule 407, SCACR. **"Confidentiality contributes to the trust that is the hallmark of the client-lawyer relationship."** Rule 1.6 Cmmt. 2, RPC, Rule 407, SCACR. In this regard, it must be construed that the confidential nature of the attorney-client relationship constitutes a substantial right.

Rule 1.9(a) recognizes the continuation of the confidentiality obligation once representation is terminated by the mandate that:

> **A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same *or 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 1.9(a), RPC, Rule 407, SCACR (Emphasis added). Rule 1.9(c) offers further protection by prohibiting a lawyer from using any information to the disadvantage of a former client. Rule 1.9(c)(1), RPC, Rule 407, SCACR.

Respondent would argue that such right is not affected due to the Circuit Court's requirement that the requested privilege log would be under a protective order. (R. p. 6). Unfortunately, a protective order does not protect Appellant at all in this situation because the Order requires the information to be provided to the very people from whom it needs to be protected, Respondent and the Kenison Firm. (R. p. 178, line 23 – p. 179, line 3).

The substantial right to maintain confidences is further affected by the Circuit Court's order in that it requires Appellant to disclose information to its current attorney that it would not otherwise disclose in the representation of the current matter. Further, to comply with the Circuit Court's order, Appellant is required to reveal confidential information related to the TMKG case to current counsel who is then required to turn it over to the very party current counsel was retained to prevent using such information against Appellant. Since Appellant does not consent to the release of this information, compliance by current counsel would be in violation of Rule 1.6(a) of the Rules of Professional Conduct. Rule 1.6(a), RPC, Rule 407, SCACR. (R. p. 166).

Additionally, Comment 14 to Rule 1.6 requires Appellant's counsel to raise these issues, stating

> **Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law.**

Rule 1.6 Cmmt. 14, RPC, Rule 407, SCACR. In attempting to raise this issue with the Circuit Court, counsel was admonished that the only ethical violation would be his failing to comply with an order of the Court. (R. p. 158, ¶5-6; p. 166; p.180, lines 23-25).

If "confidentiality contributes to the trust that is the hallmark of the client-lawyer relationship" (Rule 1.6 Cmmt. 2, RPC, Rule 407, SCACR), then this Court must protect that confidentiality, the sanctity of confidential attorney-client communications, and the fair administration of justice. If the disclosure of confidential information can be ordered to prove disqualification, the whole foundation of client protection crumbles. The Rules of Professional Conduct are designed to assure the protection of client confidences and the necessary confidential nature of the attorney-client relationship cannot simply be ignored in favor of an attorney that claims no such knowledge was obtained.

In Hagood, the Court examined the impact of granting disqualification has on a client's right to choose their own attorney and determined the right to choose one's own attorney was a substantial right affected to grant appellate jurisdiction under S.C. Code § 14-3-330(2). Id. at S.E.2d 710. If the right to choose one's attorney is considered a substantial right to grant jurisdiction, then the superior right to the fair administration of justice must certainly be a substantial right as well.

The ability to trust in the confidential nature of attorney-client communications is most certainly a substantial right which will be significantly impacted if the Circuit Court is able to order Appellant to disclose confidential attorney-client communications as a requirement for disqualification of the Kenison Firm. Such a requirement is contrary to the Rules of Professional Conduct and the existing legal authority both expressed by the South Carolina Supreme Court in Townsend, and by most jurisdictions. Given the

circumstances and claims of Respondent, this Court must provide clarity and direction to the bench and the bar in dealing with this type of situation in the future.

CONCLUSION

For the reasons stated above, the Order of the Circuit Court requiring Appellant to provide specific information pursuant to a privilege log to support disqualification of the Kenison Firm and its attorneys should be vacated, the Kenison Firm and all its attorneys should be immediately disqualified from representing Buckley in this matter and all filings and actions taken by the Kenison Firm on Buckley's behalf should be vacated.

In addition, this Court should provide clarification for the benefit of the entire bench and bar as to the correct interpretation of the Rules of Professional Conduct when it comes to undertaking representation against a former client.

Respectfully submitted,

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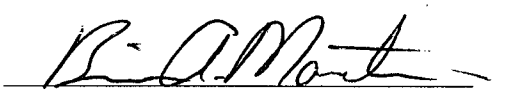
CERTIFICATE

I, Brian A. Martin, Esquire, attorney for Appellant, certify that Appellant's Final Reply Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



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PROOF OF SERVICE

I certify that that I have served the Final Reply Brief of Appellant on Respondent and all parties of record by depositing a copy in the United States Mail, first class postage prepaid, on January 12, 2015, addressed to their attorneys of record as follows:

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