THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 2007-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 2010-CP-16-0332
Appellant Case No. 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.

SUPPLEMENTAL RECORD ON APPEAL

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Ariail E. King
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(803) 771-8000

ATTORNEY FOR APPELLANT

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ATTORNEY FOR RESPONDENT TRUSLOW

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ATTORNEY FOR RESPONDENT BALLARD

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The South Carolina Court of Appeals

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April 17, 2008

Douglas N. Truslow, Esquire
P.O. Box 1465
Columbia, SC 29202

Re: Anasti, James v. Wilson, Lance

Dear Mr. Truslow:

Enclosed is the order issued in the above entitled matter. By copy of this letter and order, we are advising all interested parties of this action by the Court of Appeals.

By copy of this letter we advise all parties that according to the enclosed order, the above case on appeal is hereby dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Richland County after fifteen (15) days, exclusive of the date of filing the enclosed order.

Very truly yours,

Kenneth A. Richstad

CLERK

KAR/dhp

cc: Tony Ray Megna, Esquire
Thomas George Earle, Esquire
The Honorable Barbara A. Scott
The Honorable J. Ernest Kinard, Jr.

The South Carolina Court of Appeals

James A. Anasti, Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court, Defendants,

Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are Respondents

And Gina L. Anasti Lee is the Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No.. 2007-CP-40-00576

ORDER

Respondent filed a motion to dismiss the above-captioned appeal, arguing it was not timely filed because Appellant's Rule 59(e) motion was not filed within ten days of receiving the underlying order. Appellant filed a Return, claiming his Rule 59(e) motion was timely and accusing Respondent's counsel of filing a frivolous motion and acting inappropriately.

By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After conducting a hearing, the circuit court found "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order "much more than ten days prior to the filing of his Motion for Reconsideration." Specifically, the circuit court found

November 3, 2007, to be the latest date at which Appellant's attorney received written notice. Accordingly, Appellant's motion for reconsideration, filed on November 20, 2008, was not timely. See Rule 59(e), SCRCP (requiring motions to alter or amend the judgment be served not later than ten days after receipt of written notice of the entry of the order). Because untimely Rule 59(e) motions do not stay the time for filing and serving the notice of appeal, Respondent's motion to dismiss Appellant's appeal, the notice of which was not served until January 4, 2008, is hereby granted. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985) (explaining that the requirement of serving the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice).

AND IT IS SO ORDERED.

Columbia, South Carolina

April 16, 2008

cc: Tony Ray Megna, Esquire
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED

4/17/08 dlp

The South Carolina Court of Appeals

James A. Anasti,	Respondent,
v.	
Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court,	Defendants,
Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are	Respondents
And Gina L. Anasti Lee is the	Appellant.

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2007-CP-40-00576

ORDER

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By order dated March 13, 2008, this Court remanded the matter to the circuit court for an evidentiary hearing to determine when Appellant's attorney received the order granting summary judgment. After conducting a hearing, the circuit court found "beyond a doubt" Appellant's attorney, Tony Megna, received written notice of the underlying order "much more than ten days prior to the filing of his Motion for Reconsideration." This Court received the circuit court's

order on April 4, 2008, and Appellant's appeal was dismissed as untimely on April 17, 2008. However, unbeknownst to this Court, the attorney for Appellant filed a Rule 59(e) motion on April 7, 2008, arguing he never received notice of the evidentiary hearing.

Appellant has now filed a motion for rehearing, requesting this Court reconsider our order dismissing the appeal. We once again remand the case to the circuit court for a hearing on Appellant's pending Rule 59(e) motion. The Richland County Clerk of Court is responsible for notifying the parties when the hearing is scheduled. After the circuit court rules on the pending Rule 59(e) motion, this Court will consider Appellant's motion for rehearing.

AND IT IS SO ORDERED.

Jasper M. Cureton, A.J.
The Honorable Jasper M. Cureton

FOR THE COURT
Hearn, C.J., Thomas, J., and Cureton, A.J.

Columbia, South Carolina

June 19, 2008

cc: Tony Ray Megna, Esquire
Douglas N. Truslow, Esquire
Thomas George Earle, Esquire

FILED
6/20/08 dlp

The South Carolina Court of Appeals

James A. Anasti, Respondent,

v.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court, Defendants,

Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are Respondents

And Gina L. Anasti Lee is the Appellant.

The Honorable J. Ernest Kinard, Jr.
The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2007-CP-40-00576

ORDER

After careful consideration of the memoranda received from counsel for the Appellant and counsel for the Respondent, this appeal will be held in abeyance pending a final decision of the issue of bankruptcy. Counsel's request for resolution of appeal from Judge Manning's Orders dated April 1, 2009 and April 3, 2009, is therefore, considered moot. Counsel for the Appellant is requested to notify this Court in writing of the status of this matter no more than thirty (30) days from the date of this order and every sixty (60) days thereafter until a final decision is issued in regards to the bankruptcy proceedings.

IT IS SO ORDERED.

Joseph M. Cureton A.J.

Columbia, South Carolina

June 16, 2009

cc: Tony R. Megna, Esq.
Ben Matthews, Esq.
Douglas Truslow, Esquire
Thomas George Earle, Esquire

FILED
6/16/09

The South Carolina Court of Appeals

James A. Anasti,	Respondent,
v.	
Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court,	Defendants,
Of Whom Lance Wilson, Willis Goodwin and Richland County Clerk of Court are	Respondents
And Gina L. Anasti Lee is the	Appellant.

The Honorable J. Ernest Kinard, Jr.
The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2007-CP-40-00576
2007-CP-40-00576

ORDER

Appellant has filed (1) a motion to strike the affidavit of Amanda Hilley, and (2) a motion to settle a proposed Record on Appeal. Appellant's motions are hereby denied.

Appellant shall serve an Amended Record on Appeal, which includes all matters designated by Respondent that were presented to Judge Manning, within thirty days. The Amended Record must comply with Rule 210, SCACR, and this Court's order filed August 24, 2010. Failure to timely serve Respondent may result in the dismissal of this appeal.

The parties shall serve and file their final briefs within twenty days after Appellant serves the Amended Record on Appeal. As set forth in our order filed August 24, 2010, this Court will only consider Appellant's appeal from Judge Mannings orders filed April 3, 2008, and April 1,

2009, at this time. Final briefs, therefore, shall include only those issues relating to the timeliness of Appellant's appeal.

IT IS SO ORDERED.

C. Tony Graham, A.J.

Columbia, South Carolina

cc: Tony R. Megna, Esq.
Ben Matthews, Esq.
Douglas N Truslow, Esquire
Thomas George Earle, Esquire

FILED
2/5/10

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
JAMES A. ANASTI,)	Docket Number(s): 2007-CP-40-0576
)	
Plaintiff,)	
)	
vs.)	**CONSENT ORDER AND CONFESSION OF JUDGMENT**
)	
LANCE WILSON, WILLIS GOODWIN,)	
GINA L. ANASTI LEE, and)	
RICHLAND COUNTY)	
CLERK OF COURT,)	
)	
Defendants.)	

This matter came before me for a damages hearing on May 13, 2013. Plaintiff was represented by Douglas N. Truslow. Defendant Wilson ("Wilson") was represented by Tristan M. Shaffer. Defendant Goodwin ("Goodwin") was represented by Charlie J. Johnson, Jr.

STATEMENT OF THE CASE AND OVERVIEW

This hearing relates to a calculation of sums due Plaintiff from Wilson and Goodwin.[1] Wilson and Goodwin's obligations to Plaintiff are essentially equitable in nature and based on continued occupancy and use of Plaintiff's property – property determined by the courts and reiterated herein to have been owned by Plaintiff continuously and exclusively since the death of his father in October, 1995. It is evident that Wilson and Goodwin's obligations to Plaintiff have continued to mount as litigation instigated and continued by Lee relative to ownership of the property (and hence the specific party entitled to payment) has circuitously and laboriously wended its way through the courts. While continuing to occupy and use Plaintiff's property and/or by

[1] Defendant Lee ("Lee") is no longer involved by virtue of the terms of her bankruptcy discharge. The Clerk of Court likewise has no further interest – approximately $5,600 in funds from a separate and distinct condemnation action involving a small portion of the underlying property previously at issue had been paid into the court while ownership of the property was being litigated. Upon ownership being conclusively determined and all Lee's appeals exhausted, the funds were released to Plaintiff, by and with the express consent of Wilson and Goodwin.

virtue of Goodwin allowing its continuous use by his joint venturer Wilson, they failed to pay what would have been due. They failed to pay, while a) conceding that they had no lawful interest in the property (that they had ostensibly purchased from Lee with a good faith belief by them that she was the owner), b) alleging that a resolution of the title issue in Plaintiff's favor would bolster their claims against Lee, and c) successfully pursuing damages claims against Lee.

One of Wilson and Goodwin's positions in this matter has been that they were wronged by Lee, who had disingenuously and continuously advanced competing claims of ownership to the property. The net effect of Lee's claims and her continuing litigation on multiple fronts was that Wilson and Goodwin's ability to make repairs, improvements and other investments necessary to continue to effectively operate a business on the property they occupied was substantially impaired. Thus, their revenues declined to the point that they were unable to meet their obligations. They ultimately abandoned the property. They also assert that they were wronged by their real estate closing attorney, from whom the court/arbitrator has determined that they could not collect because of their failure to sue him within the applicable statute of limitations.

Plaintiff has conclusively been determined by the court(s) to have been at all pertinent times the lawful owner of the property. He was granted summary judgment as to all causes of action. He then promptly filed a Rule 11 SCRCP motion against Lee and her counsel.

In a separate, subsequently arbitrated lawsuit, Wilson and Goodwin asserted and established that Plaintiff was at all pertinent times the owner of the property, not Lee. That assertion and proof formed the basis for their damages award against Lee. It would be inappropriate for them to make a contrary assertion in this case; they have not attempted to do so.

The summary judgment Order herein provided that damages due Plaintiff from Wilson and Goodwin and also from Lee were to be determined at a subsequent hearing. The damages hearing, as well as the Rule 11 motion, were promptly scheduled. However, before they could be heard, Lee appealed. While the appeal was pending, and after having the arbitration award rendered against her, Lee filed for (and was ultimately discharged in) bankruptcy. This prevented recourse against her personally.

Lee's bankruptcy filing brought all State proceedings to a halt until the bankruptcy automatic stay could be lifted. The bankruptcy stay was lifted for the limited purpose of concluding the State appeal filed by Lee. Lee thereafter pursued multiple State and Federal appeals, as well as pursuing multiple motions for reconsideration and a Petition for Writ of Certiorari in the State Supreme Court. In bankruptcy court, Lee filed multiple motions, including multiple motions for reconsideration. Lee filed multiple appeals and multiple motions for reconsideration in the Federal District Court. She thereafter appealed to the Fourth Circuit Court of Appeals. While Lee lost at all levels and in all pertinent proceedings, the parties have submitted, acknowledged and agreed that this damages hearing, as well as the Rule 11 hearing, could not properly and conclusively be held until all Lee's appeals were exhausted.[2] Additionally, the parties herein have submitted, acknowledged and agreed that the actions taken by Lee kept Plaintiff from having use of his property. Those actions by Lee caused Plaintiff, as well as Wilson and Goodwin, considerable difficulty and expense. Under circumstances asserted to be sympathetic but nonetheless concededly legally non-cognizable, Wilson availed himself of the opportunity and/or ability to use and occupy Plaintiff's property, with the apparent coalescence of his joint venturer Goodwin.

Having heard arguments of counsel, considered all evidence presented, as well as having taken judicial notice of pleadings, Orders and other voluminous records in this matter, the arbitrated companion cases (2004-CP-40-5333 and 2004-CP-40-5334), the SCDOT condemnation case (2002-CP-40-06062), Lee's bankruptcy and her multiple State and Federal appeals and the stipulations of record, **I FIND AND CONCLUDE**:[3]

1. Albert Anasti and his son James Anasti owned property located at 2325 Two Notch Road, Columbia, South Carolina ("property"). They had owned the property together as joint tenants with right of survivorship since 1978.

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[2] The same attorney represented Lee throughout all proceedings until a time after her Petition for Writ of Certiorari was denied and she formally discharged him. The Rule 11 sanctions hearing against that (former) attorney has not yet been heard.

[3] To the extent conclusions of law may be, in whole or in part, findings of fact and vise versa, they are to be construed as such. Further the terms of the statement of the case and overview are adopted herein as findings and conclusions.

2. Albert Anasti died in October, 1995. He left as his sole survivors and heirs his son James Anasti (Plaintiff) and his daughter Defendant Gina Anasti Lee ("Lee").
3. At the death of Albert Anasti, Plaintiff became the sole, lawful owner of the property.
4. At the time of Albert Anasti's death, and until approximately 2003, Plaintiff had been living in Europe; Lee continuously resided in Richland County.
5. Lee was appointed as the personal representative of the estate of Albert Anasti.
6. For an extended period of years prior to Albert Anasti's death (since 1980 according to Wilson and Goodwin's pleadings), Wilson's father and Wilson (and thereafter Wilson alone since at least 1995) had rented the property from Mr. Anasti and Plaintiff for use as a nightclub -- on a month-to-month rental basis. Wilson operated the nightclub under the name of "Dave's". Until his death, Albert Anasti handled property matters on behalf of himself and Plaintiff.
7. Upon the death of Albert Anasti, Lee represented to Wilson that she had inherited the property and that all future rents should be paid to her individually.
8. Independently and thereafter, Lee represented to Plaintiff that the property was tied up in the probate of the estate of Albert Anasti. She also represented that it was not generating any income. Since Lee was his sister, Plaintiff accepted as true and relied upon those representations. It goes without saying that those representations of Lee were not accurate, although she may have initially or arguably been confused about ownership (before the condemnation lawsuit filed by SCDOT in 2002).
9. Based on her representations of being the owner of the property, Wilson paid rents to Lee from November, 1995 until December, 1999. Lee kept those sums as her own. The rental rate was $1,250 per month. In addition, Wilson was supposed to pay taxes and insurance on the property, as well as to keep it maintained.
10. Plaintiff was initially unaware of the circumstances surrounding Lee's claim of ownership, Wilson's consequent payments to Lee and that Lee had "sold" the property to Wilson and Goodwin.
11. In late 1999, believing to be true Lee's representations of ownership, Wilson entered into an agreement with her to buy the property. Rent was agreed upon

(and paid to Lee) at a rate of $1,500 per month for two months, until the projected real estate closing could take place.

12. Because Wilson was apparently unable to obtain satisfactory commercial financing to buy the property, he enlisted the assistance of his friend Goodwin.

13. As asserted by them in their multiple pleadings and, as subsequently found and concluded by the court as a result of their arbitration trial, Wilson and Goodwin were involved with one another in activities and an investment to purchase and thereafter own and use the property. Hence, they were found to have engaged in a joint venture with joint ownership, as well as imputed knowledge to one another in whatever interest they might possess in the property.

14. Under their arrangement, Lee agreed to sell the property to Goodwin with "owner financing" for the sum of $177,000. Goodwin was to make a down payment to Lee of $50,000. Mortgage payments due Lee from Goodwin on the balance were established at a rate of $1,519 per month, to be secured by a note and mortgage.

15. Upon receiving a title opinion (an erroneous title opinion) from their real estate attorney that Lee was the owner, Goodwin bought the property on the terms he and Wilson had negotiated with Lee.[4]

16. Wilson continued to operate his nightclub on the premise until October, 2012.

17. Goodwin worked at the nightclub for a period of time after Wilson had suffered a stroke, subsequent to his installment purchase in 2000. Goodwin was paid most of the installment payments due for the $50,000.00 down payment he had made for the purchase of the property from Lee.

18. Sometime in 2002 or 2003, Plaintiff returned to the United States and found that matters relating to his father's estate and specifically the property herein were not in fact tied up in probate; that Lee had "sold" the property to Wilson and Goodwin.

[4] Technically, title was to be placed in Goodwin's name, but Wilson had an agreement to buy the property from Goodwin by way of an installment sales contract and to assume the mortgage obligation, as well as responsibility for taxes. Upon projected payment to him by Wilson of the initial $50,000 over a four year period, Goodwin was to then transfer title to Wilson; provided, Goodwin was thereafter to retain a ten percent interest in the property along with Wilson.

19. Both Wilson and Goodwin knew in 2002 that Lee most likely did not own the property she had sold to them.[5] At that time, they completely stopped making any payments to Lee and never made another rent or mortgage payment thereafter.

20. Despite discontinuing payments to Lee, she did not at that time seek to foreclose or otherwise seek any relief from Wilson and/or Goodwin. That circumstance seemingly corroborated their beliefs that Lee was not the lawful owner.

21. Wilson and Goodwin initiated a lawsuit against Lee in 2004 (2004-Cp-40-5333). In their lawsuit, they alleged, *inter alia*, that Lee had sold them the property (that she did not own). They sought the return of the money they had paid her, as well as taxes they claimed they paid on the property and other damages.

22. In a separate, but related lawsuit (2004-CP-40-5334), they sued the attorney who had mishandled their real estate transaction with Lee for legal malpractice.

23. Lee counterclaimed to Wilson and Goodwin's lawsuit against her. She alleged that she was in fact the lawful owner of the property; that she had not been paid mortgage payments due and she sought to foreclose.

24. Why clearly not damaged by his error, Lee also sued the attorney who had mishandled the real estate transaction between her, Wilson and Goodwin for legal malpractice.

25. Notably, Plaintiff was not made a party to any lawsuits filed by Wilson and Goodwin or by Lee.

26. The lawsuits initiated by Wilson and Goodwin against Lee and their real estate attorney were subjected to SCRCP 40(j) dismissal, but were reinstated. Thereafter, Plaintiff brought the within suit, seeking to clear his title to the property and for damages. Wilson and Goodwin asserted in their Answer that a verdict in Plaintiff's favor would buttress their separate case against Lee.

27. Wilson and Goodwin did not file any pleading alleging affirmative legal or equitable defenses to Plaintiff's claims, nor have they advanced claims against each other. In answer to Lee's cross-claim seeking to foreclose, Wilson denied same and asserted that Plaintiff was likely the true, legal owner of the property.

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[5] Wilson was found by the Arbitrator to have known it shortly after the sale in 2000, when he attempted to find alternative commercial financing. Wilson and Goodwin were each aware of those circumstances at the time of the commencement of the SCDOT condemnation action filed in 2002.

premises); b) while remaining on the premises and continuing to operate the nightclub and/or allowing Wilson to do so, Wilson and Goodwin did not pay any periodic rents or mortgage payments to Plaintiff (or Lee) after October, 2002; c) as established in the arbitration award, shortly after acquiring the property in 2000, Wilson was put on notice that Lee did not appear to own the property; d) in October, 2002 Wilson and Goodwin each knew that Lee appeared to have "sold" them property that she did not own; and e) Wilson and/or Goodwin paid Lee monthly "mortgage" payments of $1,519 between February, 2000 and October, 2002.

35. The parties have stipulated that $1,250 per month plus payment of taxes, insurance and maintenance was the fair market rental rate for the property from November, 1995 through November, 1999; that $1,500 per month was the fair market rental rate for December, 1999 and January, 2000 and that $1,520 per month plus payment of taxes, insurances and maintenance has been the fair market rental rate since that time.

36. Plaintiff has asserted that he is entitled to be recompensed from Wilson and Goodwin for their possession and/or use of his property from 2000 through October, 2012. Plaintiff's summary of damages is set forth as Plaintiff's Exhibit 8. It is self-explanatory. It establishes the basis for damages. Plaintiff's damages claims appear credible and well founded. Wilson and Goodwin have argued that Lee and/or former counsel were culprit(s) in this case and that they caused damages. While that maybe so, it is not germane to the issue currently under consideration. Further, it is unrelated to the pending Rule 11 sanctions motion pending against Lee's former counsel.

37. Wilson and Goodwin concede they could most likely have been made whole and otherwise had a ready source of funds to pay Plaintiff if they timely sued the real estate attorney who was found to have committed malpractice in certifying the title and facilitating the real estate closing transaction. While this circumstance is perhaps sympathetic, it too is likewise and admittedly not germane to the issue currently under consideration.

38. In essence, Wilson and together with Goodwin in a joint venture have since 2000 utilized to their financial benefit what clearly appears to have been specious claims of ownership by Lee. They subsequently further utilized the fact that Plaintiff was stymied in seeking redress by virtue of Lee's claims of ownership and especially her bankruptcy filings and multiple appeals. As a matter of equity, Plaintiff is entitled to relief, regardless of the circumstances faced by Wilson and Goodwin.

39. It is not equitable for Wilson and/or Goodwin to have had the exclusive use of Plaintiff's property without paying for it. Likewise, it would not be equitable for Wilson and Goodwin together to make claims for damages (and recover a judgment/arbitration award against Lee) for the period of January 6, 2000 forward until they received the award and to thereafter deny an obligation to Plaintiff for occupancy and use during the same period of time. As hereinafter set forth, their confession of judgment is prudent, well considered and logical.

40. Wilson occupied Plaintiff's property from 1995 to January, 2000. Wilson paid Lee rent during that time and she retained the proceeds as her own. Those funds were not Lee's and Plaintiff received no payments.

41. Goodwin allowed his friend Wilson to occupy and use Plaintiff's property after their ostensible "purchase" in 2000. In doing so, and according to the findings and conclusions in the arbitration award, Goodwin was involved in a joint venture with Wilson. This conclusion is further borne out by, *inter alia*, the fact that they together sued Lee for damages, and they asserted no claims for contribution between each other in the arbitration case, nor in this one.

42. A short time before the submission of the within Order, it was represented that Plaintiff and Wilson had settled their differenced relative to sums due Plaintiff from Wilson for the period of time from 1995 through 1999. Therefore, there is no need for this court to determine damages to be awarded during that specified period. Furthermore, it has been represented to the Court that Wilson and Goodwin have agreed to a confession of judgment in Plaintiff's favor in the sum of two hundred and fifty thousand dollars ($250,000.00) effective as of June 15, 2013. Plaintiff has in turn represented that he accepts the offer of judgment and

waives claims against Wilson and Goodwin for any excess damages that may be due. In doing so, Plaintiff does not waive, and instead specifically reserves, any and all Rule 11 claims against Lee's former counsel. Given the confession of judgment and acceptance by Plaintiff, it is not necessary for the court to address damages further.

Accordingly, judgment is granted in Plaintiff's favor against Defendants Wilson and Goodwin jointly and severally in the sum of two hundred and fifty thousand dollars ($250,000.00) effective as a judgment on June 15, 2013.

AND IT IS SO ORDERED.

G. Thomas Cooper
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina
July 1, 2013

The undersigned confess judgment in the amount of $250,000.00 and authorize the entry of same.

Lance Wilson

SWORN TO AND SUBSCRIBED BEFORE ME

this 19 day of June, 2013

Notary Public for South Carolina

My Commission Expires: My Commission Expires July 20, 2016

Willis Goodwin

SWORN TO AND SUBSCRIBED BEFORE ME

this 20 day of June, 2013

Notary Public for South Carolina

My Commission Expires: My Commission Expires July 20, 2016

I Consent:

Douglas N. Truslow
Attorney for Plaintiff Anasti

I Consent:

Tristan Shaffer
Attorney for Defendant Wilson

The South Carolina Court of Appeals

Pee Dee Health Care, P.A., Appellant,

v.

Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representatives of the Estate of Hugh S. Thompson, Respondent.

Appellate Case No. 2011-185767

ORDER

After review of Pee Dee Health Care, P.A.'s ("PDHC") motion to vacate the circuit court's order of summary judgment, we find the motion raises the same issues as PDHC's appeal. In as much as this Court has issued an opinion dismissing PDHC's appeal of the circuit court's order entering summary judgment in favor of the Estate, we find it appropriate to dismiss the motion.

It is hereby ordered.

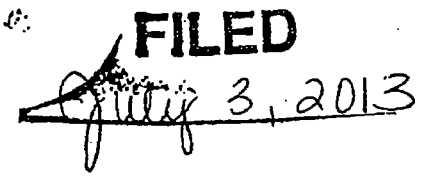
Thomas C. Huff
J. Huff

H. Bruce Williams
J. Williams

Joseph M. Cureton
A.J. Cureton

Columbia, South Carolina

cc:
Benjamin Rushton Matthews
Tony Ray Megna
John J. James, II
Jon Rene Josey



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Pee Dee Health Care, P.A., Appellant,

v.

Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representatives of the Estate of Hugh S. Thompson, Respondents.

Appellate Case No. 2011-185767

Appeal From Darlington County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2013-UP-311
Heard June 5, 2013 – Filed July 3, 2013

AFFIRMED IN PART, DISMISSED IN PART

Benjamin Rushton Matthews and Tony Ray Megna, both of Matthews & Megna, LLC, of Columbia, for Appellant.

John J. James, II of Paulling & James, LLP, of Darlington, and Jon Rene Josey, of Turner Padget Graham & Laney, PA, of Florence, for Respondents.

PER CURIAM: This appeal arises from three claims made by Pee Dee Health Care, P.A. ("PDHC") against the estate of Hugh S. Thompson, Jr. ("the Estate").[1] PDHC appeals the following orders of the circuit court: (1) the order dismissing its appeal of a Darlington County probate court order for failing to timely file its grounds of appeal with the probate court, (2) the order granting summary judgment in favor of the Estate, and (3) the order disqualifying PDHC's counsel, Tony Ray Megna. We affirm in part and dismiss in part.

1. We find the circuit court properly dismissed PDHC's appeal of the Darlington County probate court order for failure to timely file its grounds of appeal in probate court. The probate court issued an order approving the sale of Dr. Thompson's former residence on September 17, 2010. In compliance with section 62-1-308(a) of the South Carolina Code (2009), PDHC filed its notice of intent to appeal on September 20, 2010, in circuit court and probate court. *See* § 62-1-308(a) ("The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court."). However, PDHC failed to comply with the second requirement of section 62-1-308(a) in two respects. First, PDHC improperly filed its grounds of appeal in circuit court as opposed to probate court. *Id.* ("The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court."). Second, and most importantly, PDHC filed its grounds of appeal outside the forty-five day time period prescribed by section 62-1-308(a). *Id.* It is undisputed PDHC received notice of the probate court's order no later than September 20, 2010, the date on which PDHC filed its notice of intent to appeal. However, PDHC failed to file its grounds of appeal in circuit court until November 9, 2010, fifty days after it received notice of the probate court's order. Although PDHC attempts to argue that Rule 204(a),[2] SCACR, and Rule 82(b),[3] SCRCP, required the circuit court to

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[1] This appeal originated as three separate appeals; however, the parties agreed at oral argument to consolidate the cases. Accordingly, we address all three appeals in the instant opinion.

[2] Rule 204(a), SCACR, states: "In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court."

transfer PDHC's appeal to the court in which the appeal should have been filed, these rules only apply for a timely-filed appeal. Because PDHC failed to timely file its grounds of appeal, these rules are inapposite. Accordingly, we affirm the circuit court's dismissal of PDHC's appeal from probate court.

2. We find the appeal of the circuit court's order granting the Estate summary judgment is untimely. The circuit court filed its formal order granting the Estate summary judgment on September 1, 2011. PDHC filed a motion to reconsider the ruling; however, the motion to reconsider was signed by Mr. Megna only. Because the circuit court had disqualified Mr. Megna as counsel except for the limited purpose of arguing the pending motions for summary judgment, the circuit court dismissed the motion to reconsider its ruling on the summary judgment motions as "void ab initio." No other Rule 59(e) motion was submitted prior to PDHC filing and serving its notice of appeal on October 28, 2011.

We agree with the circuit court that PDHC did not file a proper Rule 59(e), SCRCP, motion. The circuit court filed its order denying PDHC's Rule 59(e) motion on Mr. Megna's disqualification on August 24, 2011. In the order, the circuit court explicitly stated that the only exception to the order was to allow Mr. Megna to represent PDHC at the hearing on the motions for summary judgment. However, the circuit court clarified that this exception was for a limited appearance only and did not otherwise attenuate the order of disqualification. Accordingly, the circuit court provided clear and unequivocal notice to PDHC that Mr. Megna was only allowed to orally argue the motions for summary judgment and was disqualified from all other appearances and activities following his disqualification. Mr. Megna's subsequent submission of PDHC's motion to reconsider the order granting the Estate summary judgment was in clear and direct violation of the circuit court's order disqualifying him as counsel. PDHC served the notice of appeal of the circuit court's summary judgment order on October 28, 2011. Without a valid Rule 59(e) motion to toll the time for filing an appeal, this notice was untimely. *See* Rule 203(b)(1), SCACR (requiring a notice of appeal to be served on all respondents within thirty days after receipt of written notice of

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[3] Rule 82(b), SCRCP, states: "When an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court in which it could have been brought."

entry of the order or judgment); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."). Accordingly, we dismiss PDHC's appeal of the circuit court's order entering summary judgment in favor of the Estate as untimely.

3. Because, as discussed above, we dismiss PDHC's appeal of summary judgment in favor of the Estate, we find its appeal of Mr. Megna's disqualification is moot. *See Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.").

Moreover, even if the issue were not moot, we find the circuit court did not err in disqualifying Mr. Megna as counsel for PDHC. Rule 3.7 of the Rules of Professional Conduct prohibits an attorney from acting as advocate at a trial in which he is likely to be a necessary witness unless certain exceptions apply. Mr. Megna is the chief executive officer of PDHC. Due to this position, Mr. Megna has exclusive and first-hand knowledge of many of the facts at issue in the instant case, including, but not limited to, PDHC's communications with Dr. Thompson, PDHC's compliance with Medicare regulations, and PDHC's role in Medicare's administrative action against it to recoup funds paid by Medicare to patients treated by Dr. Thompson. Based on Mr. Megna's position with PDHC, we find the circuit court did not err in disqualifying Mr. Megna as a necessary witness.

In addition, we find no abuse of discretion in the circuit court's disqualification of Mr. Megna prior to trial. Mr. Megna's partner, Benjamin Matthews, who was not disqualified, was an attorney-of-record in the case and had previously submitted pleadings on PDHC's behalf. Accordingly, PDHC suffered no hardship from Mr. Megna's pretrial disqualification. Further, Mr. Megna points to no South Carolina cases precluding the disqualification of counsel prior to trial.

Finally, we agree with the circuit court that PDHC's assertion that the attorney-client privilege, the work product doctrine, and the Dead Man's Statute would bar his testimony is without merit. At this stage, PDHC has failed to demonstrate that Mr. Megna's testimony would be excluded under these doctrines. Moreover, the fact that certain portions of his testimony could potentially be barred at trial due to certain evidentiary rulings is irrelevant to Mr. Megna's status as a necessary

witness. Accordingly, PDHC's appeal of the circuit court's order disqualifying Mr. Megna fails on the merits as well.

Based on the foregoing, PDHC's appeal is

AFFIRMED IN PART and DISMISSED IN PART.

HUFF and WILLIAMS, JJ., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON PEE DEE HEALTH CARE, P.A. PLAINTIFF, VERSUS THE ESTATE OF HUGH S. THOMPSON, DEFENDANT.	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT May 16, 2012 2010-CP-16-00332
STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, PLAINTIFF, VERSUS LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, AND RICHLAND COUNTY CLERK OF COURT DEFENDANT.	COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Pamela Ozment-Cartee
Circuit Court Reporter

APPEARANCES

Desa Ballard, Esquire

Douglas N. Truslow, Esquire
Attorneys for Anasti

Charles J. Johnson, Esquire
Attorney for Lance Wilson and Willis Goodwin

Jon Rene Josey, Esquire
John Jay James, Esquire
Attorneys for the Estate of Hugh Thompson

James Griffin, Esquire

(WHEREUPON, this telephone conference began at 2:44 p.m. on Thursday, March 7, 2013.)

MS. BALLARD: Is that Judge Baxley?

THE COURT: This is Mike Baxley, it is.

MS. BALLARD: Hi, Judge Baxley, this is Desa Ballard.

THE COURT: Hello. How are you, Desa?

MS. BALLARD: Good, how are you?

THE COURT: I'm doing fine, thank you.

MS. BALLARD: We have Doug Truslow, Jay James, Rene Josey, Jim Griffin, me and Doug Truslow. Did I miss anybody?

THE COURT: All right. And, is there anyone else that we are expecting?

MS. BALLARD: To my knowledge, no. I got a email from Celeste, that she was going to participate.

MR. TRUSLOW: And, Charlie Johnson asked if he could be excused. It wasn't that he wasn't interested, he just didn't think that he could add anything.

THE COURT: And, I have with me on this end of the phone, Jamie Scruggs who is my law clerk, and also Pamela Cartee, who is my resident court reporter, and she will be taking this proceeding down. So, it will help us if you would please tell us who you are before you speak each time, so that we will make sure that our record accurately

reflects the names of the speakers.

I asked for this telephone conference. I did this so that by telephone we might not inconvenience everyone to have folks driving all over the state.

I have received Mr. Griffin's motion to reconsider the sanctions order that was handed down, and the email that we sent out asked specifically to limit this discussion today to the issue of the amount of sanctions that was ordered. Now, there have been some emails that have passed back and forth since that time.

Anyone who wishes to place a comment on the record about the issues, the reduction of issues, or the matters that are before us today, I will be glad to hear from you, and for you to place your position on the record.

MS. BALLARD: Your Honor, this is Desa Ballard. I am assuming you are hearing both the Richland matter and the Darlington matter?

THE COURT: I am. We are hearing both of those, yes.

MS. BALLARD: That was my only question.

THE COURT: All right. I am aware that on a motion for reconsideration, Mr. Griffin, that before you can reconsider something, it had to be discussed below. Another way to say that, of course, is that something cannot be raised for the first time on reconsideration.

My recollection of our hearing that we had in May in Darlington was that we had primary discussion concerning, I guess, the actions of Mr. Megna, and whether or not sanctions were warranted. And really did not discuss in substantial detail the amount of those sanctions. And, I know that we did not get into what you might call the minutia of the billing. And, if that has not been raised, I am aware that it might not be properly be raised now. But my purpose in wanting to discuss is, the sanctions I recognize are substantial. I don't want to issue an order without someone having an opportunity to be heard on a particular issue or component within that issue. And, so that is why I have set this hearing for today.

Now, is there an objection from any party to this matter being taken up? I don't hear any. Mr. Griffin, do you have anything else --- First of all, do you wish to speak on the issue of the amount of the sanctions, but also do you have anything else you wish to add before we get started on that?

MR. GRIFFIN: Your Honor, I do want to speak to the amount. I don't have anything --- I don't have any objections. I have been able to piece together what I believe is an accurate procedural history that lead up to the submission of the Affidavits and at the appropriate time I would like to set that out in the record. And,

maybe if there is a dispute about that, since I was not involved, certain I don't want to say anything inaccurate, and if I do it is totally by accident.

THE COURT: All right. Go ahead.

MR. GRIFFIN: Your Honor, as I understand it, and I have --- The Court sent out an email on March 16, 2012 to all parties involved in the sanctions matter. In the email the Court, and it says, if you have requested sanctions, and this is from you, Judge Baxley, or believe you are entitled to such, please bring with you to the hearing an Affidavit of the cost detaining your hourly rate as well as the number of hours expended as a result of what you have alleged to be wrongful conduct. Including a time projection for travel and attendance at this scheduled hearing. Please provide this information to Attorney Megna at least forty-eight hours prior to the hearing date. Now, both Ms. Ballard and Mr. Truslow did that. Ms. Ballard --- Mr. Truslow submitted an Affidavit with attached time sheet on --- according to the letter dated May 4, 2012. And Ms. Ballard submitted an Affidavit and time sheet dated May 11, 2012. Ms. Ballard's Affidavit and supporting time sheets were emailed to Mr. Megna on May 11th. And, of course, the hearing was held on May 15th. In the same email, Your Honor, of March 16th, you indicated that no live testimony is anticipated,

and please provide any necessary evidence by Affidavit. And, so, that was done. And I have reviewed the transcript, and Your Honor is correct, there really wasn't a discussion much at all about the amount of sanctions that were being sought. Although in Ms. Ballard's application, she details some eight thousand --- excuse me, she details time of eight thousand and three hundred and twenty-two dollars and seventy-five cents ($8,322.75), and then she projects another ten hours at four hundred dollars ($400.00) an hour to cover to the hearing. So, she submitted an application for twelve thousand two hundred --- excuse me. Twelve thousand three hundred and twenty-two dollars and seventy five cents ($12,322.75). And, Your Honor's letter of July ruling, you asked Ms. Ballard to back out her time from that Affidavit where there was not much time, but some time devoted to her dealing with some grievance issues. And then she did that, and then by letter of August 8, 2012, she submitted a Supplemental Affidavit and added additional time to that and brought the total fees and disbursement claims by her to seventeen thousand three hundred and eighty-eight dollars and seventy-five cents ($17,388.75), and that was by letter dated August 8, 2012, and that was after Your Honor had issued the letter ruling.

With regard to Mr. Truslow, his numbers never

changed, and he submitted an application again by letter dated May 4, 2012. And in that he sought --- he sought fees and expenses totaling I believe it is, one thousand five hundred and forty-seven dollars and twenty-five cents ($1,547.75), and then there are some cost of two hundred ninety-five dollars and fourteen cents ($595.14), for a total of thirty one thousand eight forty two thirty-nine ($31,842.39). He also requested some multiplier which Your Honor did not award. But I believe that was his award in the Sanctions Order in the Anasti Case for those amounts. And you awarded Ms. Ballard, her claimed amount in the Pee Dee Case. And, I believe that is how it stands.

And subsequent to the hearing though, Your Honor, there was supplemental memorandum emailed around. Frankly, I don't have a filed copy. But it was from Ms. Zmroczek, and where she does address the issue of Ms. Ballard's right to attorney fees at all since she was proceeding *pro se*, and that memo is recorded in a Certificate of Service that I have, it is dated May 29, 2012, and it indicates according to Ms. Zmroczek, if I am saying that correctly, it was emailed to the Court, to Ms. Ballard, and to Mr. Truslow, and to the Court's law clerk on that date. So, that without getting into the arguments on the amounts, that is my understanding of the procedural

history, and where things stand. And, I just wanted to put that on the record.

THE COURT: Okay. And, now let's talk about the amounts, and you take whichever one you wish to take first.

MR. GRIFFIN: Sure, Your Honor, and I will start with Ms. Ballard first, and it is sort of an over --

These points apply to both cases, and as Your Honor, I am sure is well aware of the Wieters versus Bon-Secours case, and the standard by which to award attorney fees under Rule 11 Sanctions. And the standards is, according to the case, sanctions may be included in order to pay the reasonable cost in attorney fees incurred by the parties defending against an action brought in bad faith. And, so, and there is another case that I was involved in, it is Gooding v Brandt or Brandt v Gooding, and we litigated this similar issue, but it is a proximate case issue. It is what is the conduct that violates Rule 11, or what is the conduct that is contentious, and then what are these fees and expenses that were incurred in relation to that conduct. And, then in Ms. Ballard's initial motion, she identifies about eight hundred dollars worth of time to submit an objection to Mr. Megna's Affidavit --- excuse me, Mr. Megna's subpoena, and frankly under the rules that was all that was required of her to do, and then from that

point forward it would have been Mr. Megna or his client's obligation to move to compel the production, which says, she was not a party and was then a third-party subpoena. And under Rule 45, her --- you know, the time for needed to respond to that was to submit the objection, which she did, and then that would have been the end of it unless Mr. Megna further pursued it. There is no record that he did further pursue it. Although, so without getting to the fact that she is pro se, or that you can get attorney fees as a pro se litigant, it is our view that time and expense that she would have had incurred in response to whatever Megna did that violated Rule 11 is pretty limited. Now, the rest of the time and expense that she had documented is time and expense that has been incurred in pursing these sanction litigation, which is the balance of the time and expense. So, as an initial matter we don't think that that is recoverable. That is a pursuit that she chose, and I understand, and it was not in --- and you know, she did --- that wasn't prompted by Megna's conduct. All she had to do was object. She did object. And according to her motion, it was two hours worth of objections. But, be that as it may --- And, Mr. Megna did not file any Motion to Compel, so her involvement --- you know --- as far as what was prompted by Mr. Megna's conduct ended at that point in time.

And we do believe that the language in the Bon-Secours case and the standards under Rule 11 attorney fees and expenses incurred by the party, so that requires payment. And the followup decision is not --- is not --- it is an attorney fees case, it is a statutory attorney fees case, but it is the Williamson v Middleton case, Your Honor, and that is at 383 SC 490, and that is where the South Carolina Supreme Court --- And this was an issue of attorney fees. And there was no client agreement that the client was obligated to pay fees. The Plaintiff --- One of the parties prevailed and then submitted an application for attorney fees. And the standard in that case required that the fees that were incurred were recoverable, and that the lawyer for the party indicated, and with all honesty, that he had a handshake agreement. They would set the fees at the end if it were determined that there would be some due. But it was no enforceable fee agreement. So, therefore, the Supreme Court vacated attorney fee award of thirty-five thousand dollars ($35,000.00) in that case, because the fees were not incurred, and the client was not obligated to pay the fees under any agreement, so therefore no award was appropriate. We think that that standard applies under Rule 11 as well, and because it is fees that were incurred it doesn't --- under the case law it is not just, you

shall pay reasonable attorney fees. There is an actual requirement that they have been incurred. As to those comments with regard to Ms. Ballard's fee petition.

THE COURT: Let me hear from, to help me keep it straight in my mind, let me hear from Ms. Ballard in response to that, please.

MS. BALLARD: Thank you, Your Honor. When my objection to the subpoena was filed, and my estimate of attorney fees were included in that, I did not anticipate the considerable filings that Mr. Megna subsequently made. I forget what the document was called, but he submitted it to Your Honor, but it was four hundred, five hundred pages of materials in advance of the hearing, which, I of course, had to review. It was called a synopsis. And, it was apparently for both cases. So, I reviewed both of those, and, of course, spoke with Mr. Truslow as well. A lot of the time was spent in pursuing the fees themselves, or trying to schedule the hearing, and things like that.

Now, let me point out two things with reference to the incurred attorney fees.

First of all, of course, Your Honor, as you pointed out, this issue has not been raised, and therefore, it is nor appropriate for hearing for the first time on reconsideration.

But more importantly, the Williamson versus Middleton

case, of which I was trial and appellate counsel, and the Calhoun Case, of which I was not involved, both of them incurred fee-shifting statutes. Williamson verus Middleton incurred fee-shifting statutes under the wage payment act under Title 39, which allows the successful party to recover attorney fees against the unsuccessful party. The Calhoun Case is a domestic case involving a fee-shifting statute under what use to be Title 20 of the Family Court. Again, a fee-shifting statute.

Neither of those is applicable here, because we are seeking sanctions. And as Your Honor knows, we can request among other things our attorney fees, but the Court could award sanctions of lots of different kinds of things. So, I think it is perfectly appropriate for Your Honor to have reviewed the amount of time that I necessarily had to take away from clients that would pay me in order to respond to Mr. Megna's synopsis, and his continuous filings by him, and by Ms. Zmroczek after the hearing was held on May 15th.

The Williamson versus Middleton case and the Calhoun case, neither have anything to do with this. Those are fee-shifting statutes. They have been construed in the narrow area in which they have been -- This is not a fee-shifting situation. This is a situation to which Your Honor has found Mr. Megna's conduct to be not pleasant.

And, for that reason, you are awarding sanctions. You are not awarding attorney fees. I requested sanctions in the amount of the period --- the amount of hearings that I would have billed to other clients, and to have been paid for had I not been involved in this. Your Honor is awarding those as sanctions. You are not awarding them as fees. You are awarding them as sanctions. And, Your Honor, chose to use as the benchmark for which to determine the appropriate amount of sanctions, the amount of time that I necessarily incurred in both responding to the subpoena and preparing for the hearing, and then, of course, reading the initial information that was filed after the hearing. So, for all of those reasons, I don't think any of the grounds raised by Mr. Griffin have merit. And, I would ask Your Honor to leave the amount of sanctions awarded to me as it is.

THE COURT: And, Ms. Ballard, let me ask you. Does it make a difference under your argument rather you are pro se or not, and do you consider yourself pro se in this proceeding?

MS. BALLARD: I do consider myself pro se and it does not make a difference. Because, as I say, the cases that they are referring to are fee-shifting cases. They are talking statutes that allow award of attorney fees. I am not asking for an award of attorney fees, Your Honor.

I have asked for and received an reward of sanctions. That is an entirely separate matter.

THE COURT: Very good. Now, let's move forward to the Truslow issue, please. Mr. Griffin.

MR. GRIFFIN: Yes, Your Honor, with regard to Mr. Truslow, I would make the same points that I just made with Ms. Ballard's fee petition. In that A, that his obligation to respond to the subpoena and discovery served upon him, and then it would be Mr. Megna's obligation to then move to compel, and that would be a very limited time involvement. And, so, and then what we have here is an effort in the affirmative pursuit of sanctions against Mr. Megna, in that ninety-nine percent (99%) of the claim hours have been spent pursuing the sanctions as opposed to defending against Mr. Megna's conduct that the Court found was sanctionable, if there is a difference. But, you know, as you walk through Mr. Truslow's time sheets though, I mean, as opposed to Ms. Ballard, who was served with a subpoena that had a similar --- required a similar response, I mean, Mr. Truslow has identified a hundred and nine hours (109), and his rate is modest, and I will tell Doug, he should probably increase his hourly rate. But, still a hundred and nine (109) hours. And a lot of these hours, Your Honor, appear to be duplicative. For example. He initially receives Mr. Megna's subpoena via email, and

then he researches whether that is appropriate. And on 2/28/2012, according to the time sheets, he bills and records three hours 3.75 hours. On 3/5/2012, it appears to be from the time entry, the same subpoena via mail, and he follows up with it, and he bills --- he records 3.5 hours of time. On 3/1/2012 he bills .5 hours and thirty-five minutes with talking to the postman to be on lookout for more bulky and wrongfully addressed mail from Megna. And then on 3/6/2012 he bills extended legal research regarding discovery abuses for 8.2 hours. On 3/8 he has got extended telephone conversation with Desa Ballard for two hours. And then on 3/9 he bills with multiple time entries, and there is 9.1 hours of related research, and conversance with staff, and things of that nature. On 3/12, Your Honor, Mr. Truslow is billing for six and a half hours to drive to Florence and Darlington to review court files of those cases to determine relevance if any, to the Richland County case. Now, I am not sure how that relates to the objection that Mr. Truslow has with regard to Mr. Megna serving discovery in the Richland County Anasti case upon him. Your Honor, if you jump over to 3/23/12 he receives Mr. Megna's synopsis and records 4.5 hours of reviewing that. Yet, on 3/26 through 3/31 he records forty-eight hours (48) of reviewing the same synopsis and preparing further memos and whatnot relating

to that document. And that is fifty-two (52) hours on Mr. Megna's synopsis and responding to it. That is more than a week of legal work. And, I understand the Court's ruling that this appears to be reasonable, but it doesn't. I mean, when you look in context of what was required of Mr. Truslow to respond to this subpoena, and to simply object, and then there is a hundred hours (100) of billing of frankly, pursuit of sanction litigation, which is --- which is unfortunate, there is no question about it. And so we think that;

A. Mr. Truslow, there has been no evidence that he has incurred these fees. We haven't had an opportunity to question Mr. Truslow to see if that is the case. But, it doesn't appear that there is any evidence that his client incurred any of these fees. We think under the Rule 11 sanctions that is required, but there has to be fees incurred, and it doesn't appear to us that is the case.

B. That the claimed hours are not related to the response. And then, we believe they are excessive, a hundred and one (101) hours of sanction litigation, we don't believe --- we believe it is not appropriate. That is what we have to say there.

THE COURT: All right, thank you. Mr. Truslow, do you want to be heard in response?

MR. TRUSLOW: If I may, briefly. First of all, as

a threshold matter, I don't believe that they went about this in the proper way. There was, after the Court issued its order, there was no attempt to try to reconcile issues, which would have been required under Rule 11. There was no contact with me, Desa, Jay James, Rene Josey, Charlie Johnson; they didn't reach out. They didn't try to resolve anything. That would be as a threshold matter, I don't think they have required with the rule, and particularly Rule 59 and 11.

If we get beyond that, number two. I would echo what Ms. Ballard said. They didn't preserve any of these arguments or issues. They didn't contest any fees. They didn't submit any counter Affidavits as Mr. Griffin correctly said. Mr. Megna got my Affidavit well in advance, even though he was to get them at least forty-eight hours in advance. He says that he got them eleven days in advance. He previously had been advised that he needed to have an attorney, and that was told to him in March, but he waited until the day before the --- apparently the day before the hearing or on Sunday before the hearing on Tuesday to even get counsel. He didn't preserve anything. Instead, what he did was to accuse everybody who was opposed to him, he accused all of us of some very, very, very serious things. That we were being deceitful with the Court. That we were conspiring with

one another. That we were unethical. And, it could go on and on. He explained that we were involved in a case with Ms. Jones in Florence, or a series of cases. And that we were all conspiring against him. That necessitated looking at the files that were in Florence. He claimed that Rene in particular, Rene Josey was acting unethically and he was conspiring with us in a Darlington matter among others. That required reviewing --- carefully reviewing a file in Florence and in Darlington. We didn't take any of these claims by Mr. Megna lightly.

In the past, Mr. Megna has made ethical claims against a number of people that have all been determined either through his --- what appears to be through his staff, or otherwise ethical claims, or threats of ethical claims against a number of people, and none of those have been unfounded. The point was that it was a very serious matter. Mr. Megna made so many convoluted claims over a case, when you consider this one, it started in 2007. If you go to the companion case where Mr. Megna was involved dealing with similar issues as the Richland County case that were arbitrated by Judge Cooper, it goes back to 2004. And it has been a constant problem from the very beginning, in which very serious claims were made against a number of people. And we didn't take it lightly.

Mr. Griffin said --- he talks about it as if there

were only one email, or one letter that were written by Mr. Megna. As you can see from the file, Mr. Megna's accusations and insults were so bad that I had to tell him, I couldn't accept anymore emails and he was going to have to be blocked from emails. But he persisted, and then when he was blocked from my email, he was sending emails to my son, who was in the military at the time, or my paralegal. He would also write letters, and as you can see, he would send them to places other than my address. He would send them to 944 Richland Street, or he might get the address right but the zip code wrong. The zip code right but the address wrong. So, it was a problem that required us to look at a lot of records. Megna himself said they were over eight hundred pages of documents that he had to look at. And, finally, I was looking at what Ms. Zmroczek had said at a hearing we had before Your Honor, she didn't question the amount of the fees. She didn't preserve the issue. She didn't say anything that was appropriate. What she did in fact say that was relevant was that this case is troubling, it is disheartening. She recognizes that Mr. Megna had an ethical duty to follow the law and to be cordial. That using her words, I think she said, even though she had --- her experience had primarily been in the Public Defender's office, things in a criminal cases are often quite heated.

That it was the worst case she had seen. And that the slashing, using her words, swords had gotten worse, and worse, and worse, and that it was out of control.

The synopsis claims were --- I don't know how else to say it, but they were bizarre. Mr. Megna was making some claims that just weren't justified. But, I had to followup on those.

So, I think all of the time was appropriate. It was not contested. It wasn't raised. It wasn't preserved. And, they had a full opportunity to put in everything and contest it, and they didn't. And this only comes out --- I don't even think it came up, even though it was too late, it didn't come up when Mr. Lewis was involved, it is only coming up now. Thank you.

THE COURT: All right, thank you. And then lastly, Mr. Griffin, let me ask you, sir. In your Motion to Reconsider, are you also seeking relief from the March 18th date that the Court set *sua sponte* for a criminal contempt hearing?

MR. GRIFFIN: On the Motion to Reconsider, Your Honor, we are --- we had planned to address that, the Rule to Show Cause separately as opposed to --- as a part of this.

THE COURT: Okay.

MR. GRIFFIN: But we do request the Court to

reconsider that. And do not believe that it is appropriate to proceed in the fashion that the Court suggest, based on this record. And, for the grounds that were set forth in our Motion to Reconsider.

But we had planned to submit a full memo to the Court, which we thought they were separate issues. None are related to the sanctions piece.

THE COURT: And, just in terms of scheduling and logistics, I don't believe I have received that full memo on the issue of whether we go forward on the 18th. At this point, it is my intention to go forward on the 18th, so again, everyone else on the phone is not really involved in that matter. But, if there is some issue that you want to talk about, the postponement or canceling of that, please make sure that it gets to us quickly.

MR. GRIFFIN: Yes, sir for scheduling purposes, I just came out of a trial, a week long in Charleston. But, I have a letter to go to Your Honor about scheduling. As Your Honor knows, Mr. Lewis is still in the hospital. He has had a prolonged, very serious and grave illness. I am glad to report that he is on the mend, but he will probably be in the hospital another two weeks. And then he had a leg amputation and he will go to rehab. I don't know when he will be back in the saddle. But, this case came into Mr. Lewis. You know, as with many cases we have

had around here, I have had to step forward on the front as opposed to a supportive role in these matters. So, I was going to request the Court's accommodation on scheduling, because of Mr. Lewis' illness, and scheduling problems that we've got here.

THE COURT: Well, I will hear from you separately on that. And I just was really wanting to confirm whether that was part of our discussion today, although it really doesn't involve the other parties who are on this telephone conference with us.

MR. GRIFFIN: Yes, sir.

THE COURT: All right. Now, this is basically your motion. We have heard from both sides in reply to your argument against both sides. Do you want to reply to what you have heard?

MR. GRIFFIN: Just briefly, Your Honor. We have heard for the first time that the Court's order didn't order attorney fees for Ms. Ballard, and that is not what the Court's order is as I read it. It is a sanctions by way of awarding attorney fees. And there are in the Bon-Secours Case, the options that are identified in one of the attorney's fees incurred by the parties defending against an action brought in bad faith. So, we believe that is what the Court ordered in sanctions, and we do not believe that there has been any fees incurred. And that

the fees that are being claimed go well beyond what was necessary to respond to what the Court found to be Mr. Megna's conduct that violated Rule 11. And it is unfortunately a cottage industry has popped up for sanctions against Mr. Megna, rightfully or wrongfully, but that is what the fees and expenses have been incurred for.

THE COURT: And what is your response to the fee-shifting statute argument, and the narrow application of the attorney's fees. I think that is the Calhoun Case and others. What do you say to that?

MR. GRIFFIN: Your Honor, I say that the standard is the same under Rule 11 and contempt. And, in reading from the St. Frances Bon-Secours Case, it says, fees incurred by the party defending against the action brought in bad faith.

Your Honor, I will be happy to submit --- There is a Supreme Court decision in the case of Brandt v Gooding, where Mr. Brandt was held in contempt for submitting a fraudulent document in a deposition. The Court remanded the case and said for an award of attorney fees incurred in response to the submission of that fraudulent document. There was a whole hearing that we had before Judge Burch, and he awarded some six hundred thousand dollars to Mr. Spikes, Dan Spikes Law Firm, and that went back up on appeal. And the South Carolina Supreme Court vacated

that six hundred thousand dollar attorney fees award, because he is relating his fee agreement with Ms. Beth Gooding, and there were no fees incurred, and she was not obligated to pay any fees for that. And, I will be happy to share that with the Court. So, I know the statute is different, but the standard is the same.

THE COURT: All right.

MS. BALLARD: Your Honor, could I follow up with you one last time with actually, two last comments?

THE COURT: Please.

THE COURT: On the Williamson versus Middleton case, the Supreme Court vacated that attorney fee award because the statute in that case from Title 39, the exact number which escapes me. The language in the statute said that the prevailing party could recover attorney fees, quote "actually and reasonably" unquote incurred. And, that of course, is a very different standard from the Title 20, statutory fee-shifting burden. And then that has nothing to do with an award of sanctions. Your Honor, as you know, from the Bon-Secours Case, many different forms which sanctions can take. We ask only for an award representing the amount of time that I have lost, and the fees that would have been billed to other clients, and paid by other clients. But, I reiterate again, that it was sanctions and not

attorney fees, because this motion that Your Honor is ruling is not under a fee-shifting statute.

The second point that I wanted to make, Your Honor, is in preparing for this hearing, I noticed two time entries on my amended Affidavit for April 5, 2012, that still include some time related to the responding to the grievances. I ask the Court to reduce the amount of sanctions that were awarded to me for those two entries. Those entries are on 4/5/2012, and the time total one thousand three hundred and ninety dollars ($1,390.00). I would ask that amount be reduced from the ward of sanctions that Your Honor gave me. Because, I can't separate out what those two entries --- Some of the time did relate to the sanction motion, but from the time entry it is clear that some of it also related to responding of the grievance, and I don't have sufficient time records to break those out. So, I just ask that you remove the entire billing for those two days --- for those two entries.

RULING OF THE COURT

THE COURT: All right. Thank you. And, I am going to go ahead and rule at this time rather than take the matter under advisement to consider.

I have had the opportunity to review in advance of today's hearing some of the issues that I knew would be

set forth. And, thus, I am prepared to rule.

Mr. Griffin, the arguments that you raise about whether a pro se individual can receive attorney fees. I think are appropriate under certain circumstances. But, I believe that in a Rule 11 setting, this Court is not limited by the fact that in its ability to award a sanction based upon the fact that Ms. Ballard is representing herself in a pro se capacity. I have reviewed while we have been talking, I have up on my computer the order that grants sanctions in both cases. And it does discuss the fact that the compensation rate or the hourly rate for the attorney, particularly here I am talking about Ms. Ballard, is reasonable, given her level of expertise. So, it typically follows what would be an attorney's fee award.

But, the Court believes that it is appropriate for this sanction to be awarded here, because these were costs that were required, not necessarily quote "incurred", because they had to be paid out, but through the loss of her time, based upon the actions of Mr. Megna, the Court finds that that loss of time was directly, and you say, proximately caused by Mr. Megna's actions. And thus, the Court is going to confirm the award amounts in both of these cases, with the exception of the one thousand plus dollars which Ms. Ballard herself has asked me to

subtract.

Now, I am aware, and it has not escaped my attention that these sanctions amounts are substantial. But in response to that, I would say that Mr. Megna is the architect of his own difficulties, because the substantial time required of both counsel in responding to the really what I would call overwhelming documentation, and missives, and emails, and difficult positions that continuously flowed from Mr. Megna's pen and computer necessitated the level of response that we are seeing. And, I think it is unfair now for his counsel to turn and say, well, this is too much. It is over the top, simply because all of this was not necessitated.

Well, I believe that it was, and as it reasonably was, again having lived through this in real time as it was occurring, and watching the flow of documentation. The Court believes that what has been done here is fair and reasonable.

So, for that reason, I am going to confirm the figures.

Ms. Ballard, because we would need to issue an order that is going to change your amount awarded, I would ask you to prepare an order based on what we have today, just briefly setting forth the arguments as well as the Court's decision that I just gave. And, subtraction of the amount

that you consent to, and then issue an order confirming. And send it to me after you allow the other parties to review it via email. If you would send it to this office via email to jbaxleysc@sccourts.org. We will download it, review it and sign it, and then return it for filing and service.

MS. BALLARD: Yes, sir. Let me inquire. Do you want two separate orders, one for the Richland County case, and one for the Darlington County case?

THE COURT: I believe that you can do the same document with two captions. And we will file it separately. But, I don't believe there is any necessity at this point. The cases have grown together. So, the issues have melded to the point that we should probably do it in one document.

MS. BALLARD: Yes, sir. I will take care of that.

THE COURT: And, may I diary that for ten days just so we will have on our diary that we are expecting that within ten days?

MS. BALLARD: Absolutely. You will have it before then?

THE COURT: All right. Is there, while we still have our record running, is there any comment or response from counsel of any party who wishes to be heard? All right. Then hearing nothing, then ladies and gentlemen

we are going to close our record in this case.

Again, I regret the difficulties we all find ourselves in. But I appreciate the professionalism with which this has been handled. At this point we are going to close the record. And everyone have a good day.

MS. BALLARD: Thank you, very much, Your Honor.

MR. TRUSLOW: Thank you.

MR. GRIFFIN: Thank you.

THE COURT: Thank you.

(Whereupon, this telephone hearing was concluded at 3:28 p.m. on Thursday, March 7, 2013.)

-- END OF TRANSCRIPT --

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of Common Pleas both in Darlington County, South Carolina, and Richland County, South Carolina, on the 16th day of March 2013.

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

April 21, 2013

Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

PEE DEE HEALTH CARE, P.A.)
☐Plaintiff)

v.)

ESTATE OF HUGH S. THOMPSON)
☒Defendant.)
Check box above indicating submitting party)

IN THE COURT OF COMMON PLEAS
CASE NO. 10-CP-16-0332

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney:	Benjamin R. Matthews	Defendant's Attorney:	John Jay James, II
Bar No.	3332	Bar No.	2949
Address:	3400 West Avenue Columbia, SC 29203	Address:	P. O. Box 507 Darlington, S.C. 29540
Phone: 803-799-1700	Fax: 803-254-3678	Phone:843-393-3881	Fax:843-393-6089
email: ben@pdhc.com	Other:	e-mail:	Other:

☒ MOTION HEARING REQUESTED (attach written motion and compete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Disqualify Plaintiff's Counsel
Estimated Time Needed: One (1) Hour Court Reporter Needed? ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion - -
I hereby move for relief or action by the Court as set forth in the attached proposed Order.

January 28, 2011
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date Submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse or Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of Court; or reduced to writing from motion made in open Court per Judge's instructions
Name of Court Reporter:
☐ Other:

MOTION PAID 10441

FILED 2011 JAN 31 AM 11:50 DARLINGTON COUNTY, S.C.

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

CODE: Date:

CLERK'S VERIFICATION

Date Filed:
Collected by:
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA, COUNTY OF DARLINGTON.	IN THE COURT OF COMMON PLEAS 2010-CP-16-0332
Pee Dee Health Care, P.A., Plaintiff, vs. Estate of Hugh S. Thompson, Defendant.	DEFENDANT'S MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL

The Defendant, Estate of Hugh S. Thompson, hereby moves for an Order disqualifying Plaintiff's counsel, Tony R. Megna from the present action. This motion is based upon the Rules of Professional Conduct, as found in SCACR 407, and the supporting case law.

NATURE OF THE CASE

This claim arises from the Pee Dee Health Care, P.A.'s (hereinafter "PDHC") negligent failure to perform required due diligence before collecting Medicare benefits for work performed by its employee, Dr. Hugh S. Thompson (Defendant's decedent). As the assignee of Medicare program benefits, PDHC failed to confirm the program eligibility of Dr. Thompson who was excluded from the program for a period of time. As a result of this failure, the Medicare program subsequently sought and obtained repayment of the ineligible benefits from PDHC. Now, years later, PDHC seeks to ignore the affirmative duty placed upon it by the Medicare program and instead seeks to shift blame for its lapse to the deceased.[1]

[1] ***This issue of fault, however, has already been unsuccessfully litigated to finality by the claimant PDHC.*** Specifically, in a matter fully litigated by PDHC, a federal Administrative Law Judge (Dean C. Metry) found that PDHC "is reasonably expected to know and has an affirmative duty to know the exclusion status of its employees through due diligence prior to entering the employment relationship." (Decision of March 14, 2008 attached hereto as Exhibit A).

FACTS: COUNSEL MEGNA IS A WITNESS

Counsel Tony Megna has, and at various times and to various agencies, identified himself as the Chief Executive Officer of PDHC. For example, on behalf of PDHC, Megna has executed a "Medicare Enrollment Application" submitted to the Centers for Medicare and Medicaid Services (CMS) within the United States Department of Health and Human Services. (Attached as Exhibit B). By his signature, Megna "binds this provider to the laws, regulations, and program instructions of the Medicare program." (Form CMS-855A, Section 15). In the same application, Megna discloses himself as an owner of PDHC, a managing employee of PDHC, and as a "Director/Officer" of PDHC. Accordingly, Megna is positioned to be a person with knowledge at PDHC about the efforts of that organization to comply with Medicare "laws, regulations, and program instructions." And it is PDHC's adjudicated non-compliance that led to the adverse Medicare decision at the heart of this case.

But it is not only Megna's position as the Chief Executive that confirms his focal point as a witness in this matter. In its complaint, PDHC alleges that the decedent made "contact" with PDHC by sending an unsigned letter to the Plaintiff in which he is alleged to have "admitted" not providing "accurate information to Plaintiff upon and during his employment with the

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Moreover, the Judge found that PDHC "knew that Dr. Thompson's license was suspended indefinitely and that he received a conditional reinstatement after four years." The Judge noted that PDHC's applications for Medicare payment of Dr. Thompson's services "inquired about any exclusions or sanctions" and that Dr. Thompson's exclusion "could have easily been found by calling the Office of Inspector General or visiting their web-site which lists excluded individuals....." ***Accordingly, Judge Metry concluded that PDHC was at "fault regarding the overpayment."***

With unclean hands from its own adjudicated causative fault (lack of diligence to an affirmative regulatory duty), PDHC makes claim against the estate here under a smattering of legal theories including fraud, negligence, and equitable indemnification – which, if applicable to the alleged facts at all, require that PDHC have clean hands so as to have a right to rely on alleged misrepresentations, and so as not to have its own causative lack of diligence. Thus, the Estate fully expects this claim to be dismissed by the Circuit Court.

Plaintiff...." The complaint purports to attach a copy of the alleged letter as an exhibit. The alleged letter is directed to "Tony" – current counsel for PDHC.

In addition to the allegations of the Complaint, PDHC has also answered Interrogatories propounded pursuant to Rule 33 of the South Carolina Rules of Civil Procedure (responses dated July 28, 2010 attached as Exhibit C). PDHC's answer to Interrogatory 2 identifies the same alleged letter from decedent to Tony Megna as a document that relates to a claim or defense in the case. That interrogatory answer also references other "information sent to Tony Megna by Dr. Thompson relating to the SC Board of Medical Examiners." Thus, by the Plaintiff's own responses, Megna is the alleged recipient of documents and information relevant to claims and defenses in the case.

Obviously, questions regarding the authenticity of this letter, the circumstances of its alleged receipt, and its alleged contextual meaning are all fairly directed to Mr. Megna. Indeed, the Defendant Estate anticipates deposing Tony R. Megna, together with all the health professionals at PDHC, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure.

Even assuming its authenticity and admissibility, both contested at this point, the Thompson Estate denies that the letter contains any adverse admission or any misrepresentation. Nevertheless, the communications between the decedent and PDHC have been made an issue by the Plaintiff in this case. Clearly the Estate will need to investigate alleged facts bearing on issues raised by the Complaint in this case.

In response to the standard interrogatory 1, which calls for the identification of witnesses, PDHC lists Tony R. Megna. Apparently anticipating disqualification, PDHC's interrogatory answer asserts that "Mr. Megna is not likely to testify...." This anticipatory disclaimer does not

alter Defendant's right to discover information from witness Megna and this alone requires disqualification whether called at trial as a witness, by either party, or not.

In addition, the response to Interrogatory 8 identifies Tony Megna as the only person with whom decedent communicated, known to PDHC, about the adverse Medicare determination for recoupment. In response to PDHC's claim to equitable indemnification, the Estate has asserted that PDHC failed to timely communicate with decedent regarding the adverse Medicare determination such that decedent might participate or offer assistance with the continuing administrative and judicial appeal options available to contest that determination. Thus, these Megna communications are relevant to a claim or defense in this matter and need to be explored by the Estate.

Finally, Mr. Megna is identified in the answer to Interrogatory 9 as the person involved with the defense of the adverse Medicare determination. The defense of that adverse determination is at the heart of PDHC's current claims. A professionally competent defense of that adverse Medicare determination is essential to any alleged causative chain between alleged acts of the decedent and plaintiff's alleged damages; in other words, the failure to effectively pursue the appeal of that determination would represent an intervening negligent act. Moreover, any inequitable position related to PDHC's defensive efforts against Medicare, such as not notifying and including the decedent, *inter alia*, would act to defeat any claim it now asserts in equity against the decedent.

THE APPLICABLE RULE

In South Carolina, an attorney cannot "act as an advocate at a trial in which the lawyer is likely to be a necessary witness," unless the issue about which the attorney will testify (1) is uncontested, (2) relates to the nature or the value of the legal services rendered, or (3)

disqualification would work a substantial hardship on the attorney's client. Rule of Prof. Conduct 3.7, SCACR 407. Rule 3.7 is absolute; only when one of the three delineated exceptions applies may an advocate also serve as a witness. 1 S. C. Juris. *Attorney and Client* § 53; ROBERT M. WILCOX, South Carolina Legal Ethics § 9.1.1. An adversary, such as the Estate of Dr. Thompson, has an obligation to immediately move for disqualification when there is an issue of the opposing advocate's position as a witness. Comment (l), RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 108.

Unlike some other jurisdictions, the South Carolina rule does not differentiate between litigants calling an attorney as a witness. There is no difference in South Carolina law between a "friendly" testifying attorney and a "harmful" testifying attorney called to the stand by the client's opponent. *See, e.g.*, Taylor v. Grogan, 900 P.2d 60, 62 (Colo. 1995) (outlining the steps in jurisdictions with different requirements that must be taken by an attorney wishing to call the opposing attorney to testify in a way that is harmful to that opposing counsel's client). Thus, it makes no difference in the present action if Megna is a witness for the Plaintiff or a witness for the Defendant or both.

As outlined above, Megna's testimony relates to communications with the decedent at the heart of the claims and defenses in this case as well as administrative issues of Medicare compliance and damages. Megna's testimony does not relate to "legal services rendered." And everything about these areas of inquiry is contested. Accordingly, PDHC may argue that a disqualification will work a substantial hardship. Our courts have noted that this exception to Rule 3.7 should be construed very narrowly. Brown v. Daniel, 180 F.R.D. 298, 302 (D.S.C. 1998).

Simple extra expense or the loss of time that is inherent in any disqualification is ***not enough*** to qualify as a substantial hardship. To find substantial hardship, "courts have required something beyond the normal incidents of changing counsel, such as the loss of extensive knowledge of a case based upon a long-term relationship between the client and counsel and

substantial discovery conducted in the actual litigation." Id. In this case, discovery is just getting started; no depositions have been taken; thus, there is minimal extra expense or loss of time if any. Moreover, because Rule 3.7(b) will allow for Megna's non-witness partner Ben Matthews to continue in his existing representation of PDHC,[2] no hardship is present.

A RED HERRING: THE DEAD MAN STATUTE

In an effort to avoid Megna's clear position as a witness in this matter, PDHC may assert that the Dead Man Statute prevents the possibility of Megna testifying even though he is a fact witness. This assertion, made in various discovery responses already,[3] is a red herring and does not change the discoverability of information allegedly known by Megna as a fact witness.[4]

The Dead Man Statute, codified in South Carolina at S.C. Code § 19-11-20, is an evidentiary rule that relates to the competency of a witness to testify about certain matters. The statute exists to prevent interested parties from offering self-serving, incontrovertible testimony that may be unreliable. Harris v Berry, 231 S.C. 201, 98 S.E.2d 251 (1957); Trimmier v Thomson, 41 S.C. 125, 19 S.E. 291(1894). Specifically, a competency objection may be raised by the decedent's representatives to prohibit a person or party with an interest in the matter from testifying about communications or transactions with another person who is deceased at the time of such testimony.

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[2] Both Megna and Matthews have made appearances on behalf of PDHC in this action and related probate court proceedings.

[3] For example, PDHC's response to interrogatory 9 dated July 28, 2010. Curiously, this response suggests that it is the Defendant that has "objected" to Megna testimony based upon the Dead man Statute; after discovery, the Defendant may raise such an objection at the appropriate time before the trier of fact but has not "objected" yet in any forum to any testimony.

[4] PDHC may also raise privilege as the basis to protect Megna from testifying. In PDHC's response to interrogatory 9 dated July 28, 2010, it is asserted that "all communications of Mr. Megna with employees of Plaintiff are privileged under both the attorney-client privilege and the attorney-work product doctrine."

Our courts have a history of strict construction of the Dead Man Statute.[5] Thus, a discovery deposition is essential to determine the potential scope of applicability in a matter such as the case *sub judice*. While the competency objection may be waived by the decedent's representatives, our Court of Appeals has previously held that a discovery deposition regarding the communications between a decedent and an interested person or party does not "open the door" or waive the availability of the objection at trial. Thomas v. Taylor, 300 S.C. 127, 386 S.E.2d 630 (Ct. App. 1989)(Sanders, Chief Judge). The court in Taylor relied, in part, on Rule 32(d)(3)(A) of the South Carolina Rules of Civil Procedure which provides that "Objections to the competency of a witness ... are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time." Obviously, Dr. Thompson's death cannot be removed or obviated "before or during" the anticipated Megna deposition so waiver is not possible at a deposition.

OTHER RED HERRINGS: PRIVILEGE AND WORK PRODUCT

PDHC has also asserted that Megna's communications with regard to the Medicare appeal efforts are protected by either the work-product doctrine or by attorney-client privilege. PDHC may raise these issues as reasons to prohibit Megna from testifying. In PDHC's response to interrogatory 9 dated July 28, 2010, it is asserted that "all communications of Mr. Megna with employees of Plaintiff are privileged under both the attorney-client privilege and the attorney-work product doctrine."

[5] See Estate of Revis by Revis v. Revis, 326 S.C. 470, 484 S.E.2d 112 (Ct. App. 1997) ("The 'dead man's' statute is an exception to the general rule of witness competency. It is to be read restrictively, and the party requesting its use bears the burden of establishing its applicability.").

A. The Work Product Doctrine

The work-product doctrine seeks to protect things or information "prepared in anticipation of litigation or for the trial ..." Specifically, Rule 26(b)(3) of the South Carolina Rules of Civil Procedure protects "against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." The work-product doctrine does not, however, extend to anything and everything an attorney might have done – particularly when acting in the capacity of a CEO of a medical practice. Even where applicable, Rule 26(b)(3) provides for an exception when a party is "unable without undue hardship to obtain the substantial equivalent of the materials by other means."

The work-product privilege applies only to "attorneys' or legal representatives mental impressions, conclusions, opinions, or legal theories authored in anticipation of litigation." Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 668 (10th Cir.2006). Fact work product is not absolutely privileged and discovery of fact or non-opinion work product may be compelled in some circumstances. In re Qwest Communications Int'l. Inc., 450 F.3d 1179, 1186 (10th Cir.2006). "Work product which is primarily factual in nature is not absolutely immune from discovery under the rule. At best, it receives a qualified protection which is overcome if the opposing party shows substantial need of the material and inability to obtain it elsewhere without undue hardship." Transit Authority of River City v. Vinson, 703 S.W.2d 482, 486 (Ky.App.1985); see also Duffy v. Wilson, 289 S.W.3d 555, 559 (Ky.2009). Absent some audio recording, the only means to get the substantial equivalent of Dr. Thompson's alleged conversations with the CEO of PDHC is to ask the surviving party to those conversations.

In addition, the work product doctrine is limited to protecting such things in the context of the litigation to which the information relates – *not other litigation.* Accord Kirschbaum v. WRGSB Assocs., No. 97-5532, 1998 U.S. Dist. LEXIS 8860, at *3 (E.D. Pa. June 18, 1998). In this case, the Defendants are not interested in communications Megna may have had about the litigation *sub judice*; rather, the Defendant's inquiry, to the extent it involves litigation at all,[6] would be about the litigation with Medicare – *not* the present litigation with the Estate. The litigation with Medicare is over and the protection, if applicable at all, would only apply in the context of that litigation – protecting Megna's thoughts about the Medicare litigation from disclosure to Medicare; it does not apply here.

B. Attorney-Client Privilege

South Carolina has long recognized the attorney-client privilege against the disclosure of confidential communications by a client to his attorney. State v. Love, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). The privilege applies only to "confidential disclosures by a client to an attorney made in order to obtain legal assistance." Fisher v. United States, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 186 (1980). The burden is on the proponent of the privilege to demonstrate its applicability. United States v. Jones, 696 F.2d 1069, 1072 (4th Cir. 1982). The party asserting the attorney-client privilege must establish not only that the attorney-client relationship existed, but also that the particular communication at issue is privileged and that the privilege was not waived. Cameron v. Gen. Motors Corp., 158 F.R.D. 581, 584 (D.S.C. 1994), vacated by, in part In re Gen. Motors Corp., No. 94-2435, 1995 U.S. App. LEXIS 41270 (4th Cir. 1995).

[6] Much of the inquiry would not involve any litigation. Defendant wants to make inquiry into things such as the authenticity of the alleged Thompson letter, the circumstances of the alleged receipt of the Thompson letter, and the alleged contextual meaning of such letter. Such inquiries clearly do not touch upon any attorney's work-product.

Turning to the specifics of this case, the privilege would not extend to Megna's general communications when acting in the capacity of a CEO of a medical practice except for the limited circumstances where the medical practice is seeking legal advice. For example, Megna's communications with third parties such as government regulators, insurers, and Medicare program administrators is clearly not for the purpose of PDHC obtaining legal advice from those parties. Even routine communications of a CEO with employees about compliance with policies and procedures is not for the purpose of PDHC obtaining legal advice.

Further, there is nothing in the alleged Thompson letter to Megna, attached to the complaint, that indicates that Thompson is seeking legal advice. Moreover, ***that communication has already been divulged by PDHC as part of its complaint*** – so even if it arguably related to legal advice needed by PDHC at the time, that privilege has clearly been waived by its disclosure. Clearly Megna is now subject to examination as to details of a document that was so important that it was identified as an attachment to a publicly filed complaint.

Moreover, by placing the subject of communications and disclosures between the decedent and Megna (on behalf of PDHC) into controversy, PDHC has implicitly waived any possible remaining or existing privilege. Implicit waiver arises when the client places otherwise privileged matters in controversy as part of a claim or defense. Duplan Corp. v. Deering Milliken, Inc., 397 F.Supp. 1146, 1161 (D.S.C. 1975). See also In re Long Point Road Ltd. P'ship, No. 93-72769-JW, 1997 Bank. LEXIS 2403, at *9-10 (Bankr. D.S.C. Sept. 8, 1997); see also Hearn v. Rhay, 68 F.R.D. 574, 580 (E.D. Wash. 1975).

Fairness is the underlying touchstone for implicit waiver; ***the rationale is that privileged materials ought not be used as both a shield and sword.*** See In re: United Supermarkets, Inc., 36 S.W.3d 619, 621 (Tex. Ct. App. 2000) ("a party who is seeking affirmative relief should not

be permitted to maintain an action, and at the same time, maintain evidentiary privileges that protect from discovery outcome determinative information not otherwise available to the other party."); see also Hangards, Inc. v. Johnson & Johnson, 413 F. Supp. 926, 929 (N.D. Cal. 1976) ("a party may not insist on the protection of the attorney-client privilege for damaging communications while disclosing other selected communications because they are self-serving.").

In the case *sub judice*, the crux of the PDHC complaint is that decedent Thompson did not disclose information to PDHC or gave wrong information to PDHC – in part through its CEO Tony Megna. Under the guise of privilege, Megna cannot now avoid examination on the disclosures and communications made to him that he now claims were tortious.

CONCLUSION

Defendant's counsel, Megna, should be disqualified here, as he will be a necessary witness. Megna is the CEO of the Plaintiff organization and is an owner with a financial stake in the outcome of this litigation. By his position alone, Megna is central to the issues involved in this case. In addition, Megna was intimately involved in the relationship between Plaintiff and the Decedent Hugh S. Thompson, and was responsible for many decisions that were made regarding the employment between the two parties. Megna's knowledge of these important facts proves that his testimony will be necessary in this case. In discovery or at trial or both, Megna will be called upon to testify regarding facts at issue in the present action, and thus, Megna cannot proceed as an advocate for the Plaintiff in this proceeding.

This is the exact factual scenario for which Rule 3.7 was designed. Megna clearly has a personal interest in the case that he is advocating. Because Megna is a witness regarding

questions of fact in the present action, the disqualification of Defendant's counsel Megna must be ordered.

January 28th, 2011

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ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA,	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	DOCKET NO.: 10-CP-16-0332
Pee Dee Health Care, P.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Estate of Hugh S. Thompson,	)	
	)	
Defendant.	)	
	)	

I hereby certify that on this 28th day of January, 2011 a copy of the above and foregoing **Defendant's Motion to Disqualify Plaintiff's Counsel**, has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

Benjamin R. Matthews, Esquire
Tony Ray Megna, Esquire
Matthews & Megna, LLC
3400 West Avenue
Columbia, SC 29203

Rebecca McDow
Secretary to J. René Josey

FILED
2011 JAN 31 AM 11:51
SCOTT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON
IN THE COURT OF COMMON PLEAS

Pee Dee Health Care, P.A., Plaintiff, v. Estate of Hugh S. Thompson, Defendant.	10-CP-16-0332

RETURN OF PEE DEE HEALTH CARE, P.A. TO DEFENDANT'S MOTION TO DISQUALIFY

INTRODUCTION

PART I

The Plaintiff, Pee Dee Health Care, P.A. is a professional medical association with clinical offices in Darlington, SC and Olanta, SC. The Defendant is the Estate of Hugh S. Thompson, M.D. Dr. Thompson died on November 5, 2009.[1] This action is a proceeding pursuant to S.C. Code Ann. Section 62-1-201(32). The Plaintiff is a claimant of the estate S.C. Code Ann. Section 62-1-201(4). The Personal Representatives of the Decedent's estate [the Decedent's grown children] are the sole successors as defined by S.C. Code Ann. Section 62-1-201(42) to the assets of the estate other than the claim of the Plaintiff[2]], and trustees to the estate as defined by S.C. Code Ann. Section 62-1-201(45) with corollary fiduciary duties to the estate.

[1] The undersigned has been the CEO and General Counsel to Plaintiff since 1995. The undersigned had no conversations with the Decedent in regard to any of the matters contained in this lawsuit. However, the Decedent initiated a telephone call indicating he was sending unspecified documents to the Plaintiff. Those documents have been provided to the Defendant during discovery. During discovery, the Defendant was notified of the employees of the Plaintiff who did, in fact, have actual contact with the Decedent.

[2] There is another claim against the estate that is being defended by the Decedent's professional malpractice carrier.

Both the Plaintiff and the Personal Representatives of the Estate are "Interested Persons" as defined by S.C. Code Ann. Section 62-1-201(20). Apparently, Mr. James and Mr. Josey are representing both the Defendant estate and the Personal Representatives[3] of the Estate as defined by S.C. Code Ann. Section 62-1-201(30). This is problematic as the Personal Representatives are fiduciaries to the estate, and must exclude all selfish interest in its dealings with others who make claim to the assets of the estate. *Cartee v. Lesley*, 290 S.C. 333, 350 S.E. (2d) 388 (1986). "Consequently, it is generally undesirable for one of the beneficiaries of a trust to act as trustee, since he is thereby put in a position to favor himself at the expense of the other beneficiaries." *Yates v. Yates*, 255 Ill. 66, 99 N.E. 360 (1912); *Selleck v. Hawley*, 331 Mo. 1038, 56 S.W. (2d) 387 (1932). A "fiduciary" includes a personal representative under § 62-1-201(13) (1987).

In evaluating an attorney's duties to third parties under the probate code, the Supreme Court stated, in *In Douglas ex rel. Louthian v. Boyce*, 542 S.E. 2d 715 (2001),

> "...[W]e emphasize that attorneys must conduct themselves ethically in all matters. The fact the legislature has seen fit to limit an attorney's responsibility to third parties when representing a fiduciary does not diminish this overriding ethical obligation.

PART II

The Plaintiff submits that the purpose of the Motion to Disqualify, as noted herein, violates, among other rules, Rule 407, Rule 4.4(a) of the SCACR in that the motion serves no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person. Comment 1 to Rule 4.4 states:

> Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may

[3] It is unclear whether Mr. James and Mr. Josey are representing the Personal Representatives of the Estate in their individual capacities as well. If so, this implicates at least Rule 407, Rules 1.7, 1.8(g), and 2.3. If not, then Rule 407, Rules 1.18 and 4.3 are implicated as well as the application [or lack thereof] of the attorney-client privilege.

> disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client lawyer relationship.

PART III

The Decedent, Dr. Hugh Thompson, was disbarred[4] as a physician from the Medicare program effective March 31, 1996. The Defendant admitted this fact on page 2, ¶ 10 of Defendants Answer filed June 17, 2010]. The Decedent admitted this fact in a statement he made dated May 28, 2004 [Exhibit E][5], and the letter from the Medicare OIG evidencing Decedent's disbarment is attached as Exhibit F. For the Court's convenience, the exhibits[6] Plaintiff refers to herein have been bound in a separate volume; and are incorporated hereinto be reference.

In early 1998, Decedent was employed by the medical offices of Don Fowler in Marion, SC. While working in Dr. Fowler's medical offices, the Decedent filed an application with Medicare to be approved as an eligible physician to see those patients enrolled in the Medicare program. That application is attached as Exhibit A, and is discussed in more depth below. On June 12, 1998, Medicare sent Dr. Thompson a request that stated his original application was

---

[4] Disbarment of a physician such as Decedent from the Medicare program excludes the offending physician from participation in the Medicare and State health care programs so that no payment is made for any items or services (other than an emergency item or service) furnished, ordered or prescribed by you under the above-mentioned programs. The foregoing explanation excludes possible criminal implications to disbarment which are not present in the instant case.

[5] The two-page document [Exhibit E] was provided to the Plaintiff by Mr. James by letter dated July 9, 2010 (a copy of Mr. James' letter is attached hereto as Exhibit GG, see item 2).

[6] In its various Motions, the Defendant has referred to several of the exhibits Plaintiff has provided this Court. The Defendant, however, reserved objections to their admissibility. Most, if not all, of the documents were obtained by both Plaintiff and Defendant from public sources, government offices or businesses that retained the documents in the ordinary course of their business. Regardless, there is little doubt the documents are admissible under the SC rules of evidence, including but not limited to Rules 803, 804, 901, 1003, 1004, 1005, 1007, 1008, and 1101.

PART VIII

PREDJUCIAL USE OF UNRELATED, INAPPROPRIATE INFORMAITON, AND DEFAMATORY LITAGATION STATEGY

The undersigned submits that not only do the Personal Representatives of the Estate of the Decedent have conflicts of interest in the case at bar, and not only have they made mis-statements of material facts by co-mission and omission, but that they have also resorted to an inappropriate and demeaning litigation strategy in the case at bar that is, in its best light, dishonorable. The Defendant has produced absolutely no evidence whatsoever that the undersigned had any contact with the Decedent other than the Decedent providing limited documents to the Plaintiff that have been disclosed to the Defendant during discovery. Mr. Josey and Mr. James also know they obtained these same documents from the SC Board of Medical Examiners, see Mr. James letter dated June 2, 2010 [See Exhibit KK]. It is not much of a leap to conclude that that there was and is no reasonable basis to file the Motion to Disqualify in the first instance.[13]

The Motion to Disqualify is replete with implied [and not so implied] offensive and unjustified personal and professional attacks on the integrity of the undersigned. It is no secret that the Plaintiff and the undersigned are involved in litigation now pending in Florence County that is completely unrelated to the case at bar. Nor is it a secret that the undersigned was the CEO of MCHG, LLC, the holding company that is at the center of the Lake City litigation. Mr. Josey's and Mr. James' attaching a copy of the Medicare 855 to the Motion to Disqualify noting that fact is for no legitimate reason other than to inflame the passions of this Court. The undersigned is extremely aware that Mr. Josey and Mr. James are attempting to convey to the

[13] Mr. Josey's law firm has been previously admonished for discovery misconduct. The Plaintiff remains astounded that Mr. James' has participated in such matters.

Court the misleading, insulting and not so subtle message to this Court that the undersigned is somehow "dishonest, untrustworthy", etc. They can phrase the issue however they wish. But the truth is they have underestimated the undersigned's absolute unwillingness to bend to such baseless, self-serving, dishonorable actions. The undersigned's association with MCHG and the "Lake City' litigation issues occurred no less than seven [7] years *AFTER* the Decedent left the employ of the Plaintiff. Moreover, the Decedent *has actually admitted his own wrongdoing.* [See Exhibit E]. Mr. Josey, Mr. James, and the Personal Representatives of the Estate of the Decedent have seriously miscalculated the determination of the Plaintiff, and the undersigned, to remedy the wrong that has occurred in the case at bar – as well as in the Lake City matters.

The undersigned has no qualms in informing this Court that the 'Lake City litigation' involves significant allegations of unethical and unprofessional conduct by lawyers of one of the largest law firms in this state, allegations of unethical and unprofessional conduct by lawyers in an influential firm in the Pee Dee, allegations of unethical and unprofessional conduct by relatives of a judge in Florence County, allegations of unethical and unprofessional conduct by physicians with medical practices in Lake City, SC, and allegations of conspiracy, fraud and unprofessional conduct by many others. Neither is it a secret that the 'Lake City litigation' began with the foregoing lawyers and physicians providing *ex parte* information to a Florence County judge[14] that led to the issuance of an *ex parte* restraining order against the undersigned and others. Nor is it secret that the *ex parte* order, as intended by the unethical conduct of many, destroyed a business venture in which the Plaintiff, the undersigned and others were partners.

While the undersigned is perhaps prohibited from discussing the precise nature of the

[14] The undersigned was the Chief Executive Officer of the venture. That is no secret and the undersigned has never denied it. However, the undersigned's position as CEO of that venture, that was initiated in 2007-08 has nothing to do with the current proceedings before this Court.

pending investigations surrounding the matters, the undersigned can attest to the fact, that nearly three years after the initial events, no allegations of wrongdoing against the Plaintiff nor the undersigned have been proven true for the simple reason that there was no wrongdoing by the Plaintiff nor the undersigned in the first instance.

In sum, the Plaintiff and the undersigned, as well as many others, were victimized by many in the Pee Dee area in regard to the Lake City matters. Neither the Plaintiff nor the undersigned has asked for nor expect compassion, empathy, or even understanding from anyone. Additional litigation against those involved in the events leading up to and including the obtaining of the fraudulently obtained *ex parte* order is forthcoming. The Plaintiff provides the foregoing information to this Court for one simple reason. Counsel for the Defendants have unnecessarily, maliciously, and unethically interjected the 'Lake City litigation' into this lawsuit by their personal attacks and insinuations of improper conduct by the undersigned; and have attached a Lake City document to their Motion to Disqualify for the sole realistic reason of prejudicing these proceedings. The Motion to Disqualify crosses the line from advocacy to obstructionism. See the foregoing discussion in relation to Rule 401, Rules 3.3 and 3.4.

The false and unprincipled personal accusations and innuendos being made by Mr. James and Mr. Josey against the undersigned have placed this Court in the unfair and unenviable position of determining whether or not Mr. James and Mr. Josey's accusations [implied and explicit] have prejudiced these proceedings to the extent this Court should *sua sponte* recuse itself from hearing and determining these matters. In the Lake City litigation, the Chief Justice of the SC Supreme Court specifically assigned the proceedings to a jurist outside of the immediate Pee Dee area because of concerns of actual and perceived conflicts of interest as well as the appearance of such conflicts. Mr. James' and Mr. Josey's unprincipled attacks on the

undersigned and the Plaintiff have placed this Court in a similar position considering the distasteful circumstances we collectively find ourselves discussing.

Regardless of the Court's determination of the foregoing, the Plaintiff responds to the Defendant's Motion as follows with the foregoing and the following.

PART IX

1. The basic dispute between the parties revolves about funds repaid to Medicare by Plaintiff on Decedent's behalf during a time period [1999-2000] when, unknown to Plaintiff, Decedent was admittedly disbarred as a provider of medical services under the Medicare program. As noted herein,

   a. Decedent admitted in May, 2004 that, in March 1996 [the first letter], he received a letter from the Medicare OIG stating he had been disbarred as a provider in the Medicare program. [See Exhibit F].

   b. The Defendant's issue as to the undersigned's 'necessary' testimony concerning the document and the authenticity of this document in the first instance has been obviously, purposely and patently intended to mislead this Court because:

      1) As noted previously, Mr. Jay James, by letter dated July 9, 2010 (a copy of which is attached hereto as Exhibit GG) actually provided both pages 1 and 2 of the document to the Plaintiff. As noted, **Mr. James specifically entitled the document "Summary of events and observations believed to have been prepared by Hugh S. Thompson. Jr. May 28, 2004.**

      2} A two-page version of this document was produced and provided to Plaintiff during discovery in this case from FirstChoice Health. The two page version of the document is attached hereto as Exhibit II. This same document (as all documents provided by FirstChoice) was provided to the Defendant by Plaintiff on July 30, 2010. A copy of the email evidencing the documents produced from First Choice to Defendant's counsel, Jay James, is attached hereto as Exhibit MM.

The Plaintiff's answers to interrogatories have been updated to reflect the complete document was obtained by Plaintiff as noted above even though the Defendant's received the document from Plaintiff months prior to the filing of their Motion and provided the Plaintiff the document.

The Plaintiff respectfully requests the Motion to Disqualify filed by Defendant be denied, and for this Court to provide such other and further relief as is just and appropriate, including reasonable attorney's fees and costs for the defense of the matter.

Respectfully submitted,

Tony R. Megna
Attorney-at-Law
3400 West Avenue
Columbia, SC 29203
803.799.1700

March 11 2011.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES A. ANASTI, Plaintiff, vs. LANCE WILSON, WILLIS GOODWIN, GINA L. ANASTI LEE, And RICHLAND COUNTY CLERK OF COURT, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Case No.: 2007-CP-40-0576 **AFFIDAVIT OF DESA BALLARD**

PERSONALLY APPEARED BEFORE ME, **Desa Ballard**, who being duly sworn, deposes and says (in her words):

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except as to those matters stated on information and belief, and as to them, I have a good faith basis for believing them to be true.
2. I am a member of the South Carolina Bar, having been admitted in 1983.. My Curriculum Vitae is attached. The primary focus of my practice is professional responsibility and ethics for lawyers. I also do a considerable amount of state court appellate work, having appeared as counsel of record in several hundred reported cases appearing in Westlaw. I am AV rated with Martindale Hubbell. I am also an adjunct faculty member at the South Carolina School of Law teaching Advanced Legal Profession, which is essentially an advanced legal ethics course. I have been qualified by the circuit court as an expert witness in professional responsibility for lawyers in the state courts on several occasions.
3. Mr. Truslow has been consulting with me on and off concerning ethical and appellate issues he has encountered with attorney Tony Megna in the referenced case since

2007. I have reviewed a great deal of the material related to the underlying case, although I hesitate to say I have seen it all, because there is so much and a great deal of the documentation provided to Mr. Truslow by Mr. Megna (and provided to me for review) is nonsensical and irrelevant.

4. I have followed the progress of the Richland County case through Mr. Truslow and advised Mr. Truslow of his obligations as a lawyer in dealing with Mr. Megna (who has made misstatements of fact to the courts in the various venues in which matters in this case have appeared). Long ago, I told Mr. Truslow that the legal issues raised by Mr. Megna in this case, ostensibly on behalf of his client Gina Lee, were frivolous at law, and that he probably had an obligation to this client to seek sanctions against Ms. Lee for requiring litigation of patently frivolous issues. I understand he has done so.
5. Mr. Truslow has asked that I examine the single issue of the reasonableness of the amount of time he has spent and the fees he has incurred in responding to Mr. Megna's efforts to undertake discovery for purposes of the pending sanctions motion. The unusual scenario presented here is that apparently Mr. Megna is no longer representing Ms. Lee, but is using the caption in this case (where he formerly represented Ms. Lee) to seek discovery to defend against sanctions that are being sought against him (not against his former client).
6. I have reviewed extensive materials related to this matter. I have reviewed selected portions of the pleadings and correspondence related to this matter, as it relates to the March 9, 2012 motion. I have reviewed Mr. Truslow's Memorandum in Support of his Fee Affidavit, his time sheet as well as the "synopsis" submitted by Mr. Megna.
7. I have met and spoken with Mr. Truslow to go over in detail this matter that is currently before the Court. Mr. Truslow has spent considerable time on the subject of his March 9, 2012 motion.
8. In my opinion, Mr. Truslow's time in responding to the synopsis of Mr. Megna has been substatial, but necessary, because of the many misstatements of fact in the synopsis which had to be rebutted. Mr. Truslow's hourly rate is reasonable, even modest. The time he spent was both appropriately and necessarily expended, especially in light of the arguments and claims of Mr. Megna and the tortured legal reasoning and procedural posturing he has used. Because of the complete inability of

Mr. Truslow's client to pay the fees incurred, Mr. Truslow's fees must be considered contingent, warranting a lodestar multiplier in some amount.

9. My opinion is that the time spent by Mr. Truslow in responding to the discovery attempts was reasonable, the hourly rate should be increased by a lodestar multiplier in an amount the court feels is appropriate, and an award of fees and sanctions against Mr. Megna in favor of Mr. Truslow is appropriate

Desa L Ballard
DESA BALLARD

SWORN TO AND SUBSCRIBED BEFORE ME

this 11 day of May, 2012

Notary Public for South Carolina

My Commission Expires: 2-3-16

August 4, 2011

Tony Megna, Esquire
3400 West Ave.
Columbia, SC 29203

RE: James Anasti v. Gina L. Lee, et al.

Dear Mr. Megna:

It has come to my attention that you are attempting to subpoena materials from others relative to communications with or from me that, to the extent they ever existed, would be confidential, work product, mental impressions and/or privileged. Please let this letter serve as an objection.

If you can explain the precise nature of what you want, why it is relevant, not privileged and show how you are not simply on a "fishing expedition." I may reconsider the objection, but until then, it stands. Finally, I would like to note that at this point, you have not served me with any subpoena, nor have you attempted to put me on notice that you were serving subpoenas on others.

Sincerely,

Douglas N. Truslow
DNT/mcw

cc: Desa Ballard
Jay James
Rene Josey
Steve Licata
Curtis Dowling

Matthews and Megna, LLC

Attorneys and Counselors at Law
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: tmegna@gmail.com

August 8, 2011

The Honorable J. Michael Baxley
531 East Carolina Avenue
Hartsville, SC 29550-4311
[Via email to JBaxleyLC@sccourts.org and first class mail]

Re: Estate of Hugh S. Thompson, Case No: 10-CP-16-0332

Dear Judge Baxley:

This letter is an update on my previous correspondence to you dated July 27, 2011. The Plaintiff has subpoenaed documents from several parties to verify the extent of the representation of and involvement in matters by attorneys of Turner Padgett and others in the 'conflict' matters discussed with you at the hearing on July 19th as well as matters related to the 'Lake City litigation' to which the Plaintiff has previously referred in both correspondence and pleadings filed with the Court. The initial responses to the subpoenas are due August 17, 2011. We have received correspondence that at least one of the subpoenas may be contested in the Richland County Court of Common Pleas. We are awaiting responses form the others.

Unfortunately, matters has been exacerbated and delayed by the need to subpoena records from counsel for the Defendants as they have refused to otherwise cooperate in the requests made by the Plaintiff to understand the nature and extent of the matters at issue. In addition, Turner Padgett has contacted independent counsel to represent PDHC in the case where there is a known conflict, but has done so without notice to PDHC, involvement of PDHC, the consent of PDHC, or providing any information as to the impact upon the current case – including but not limited to the ethical implications. PDHC is in the process of notifying the Court where the matter is pending, and requesting a hearing be held as soon as possible to determine the propriety of Tuner Padgett's independent actions and the impact on PDHC, and other matters.

Under the circumstances, PDHC requests this Court to stay all matters pending before this Court. At the July 19th hearing, this Court announced it was holding its' previous order in abeyance disqualifying the undersigned from representing the Plaintiff. If the Court desires further information, or wishes the Plaintiff to take other actions please let me know. Otherwise, I will apprise the Court approximately every thirty (30) days of the progress of the matters.

The Plaintiff respectfully reserves its right to take further actions following receipt and evaluation of the information received.

Thank you in advance for your consideration in this matter.

With kind regards, I remain

Sincerely yours,

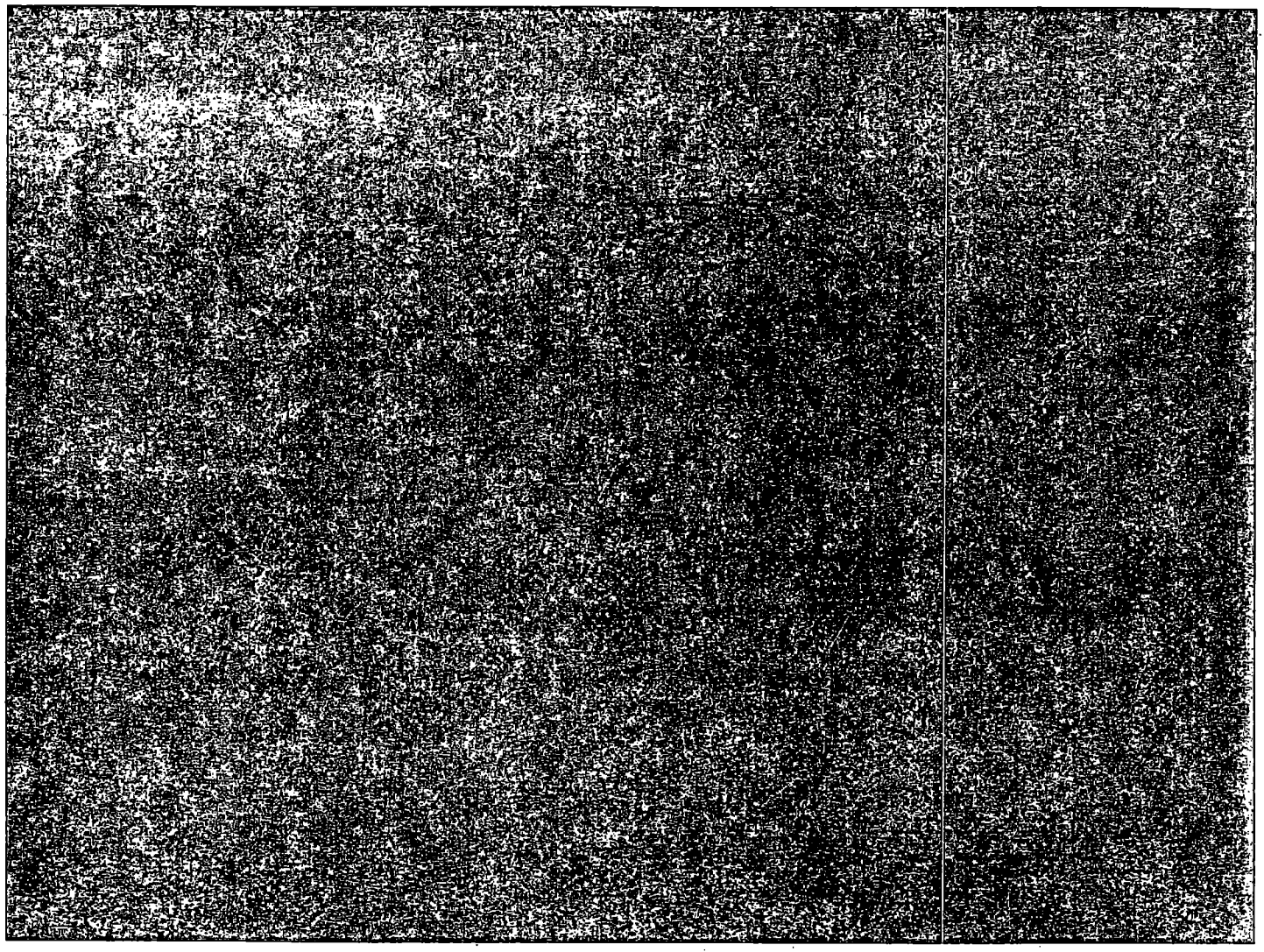
s/Tony R. Megna

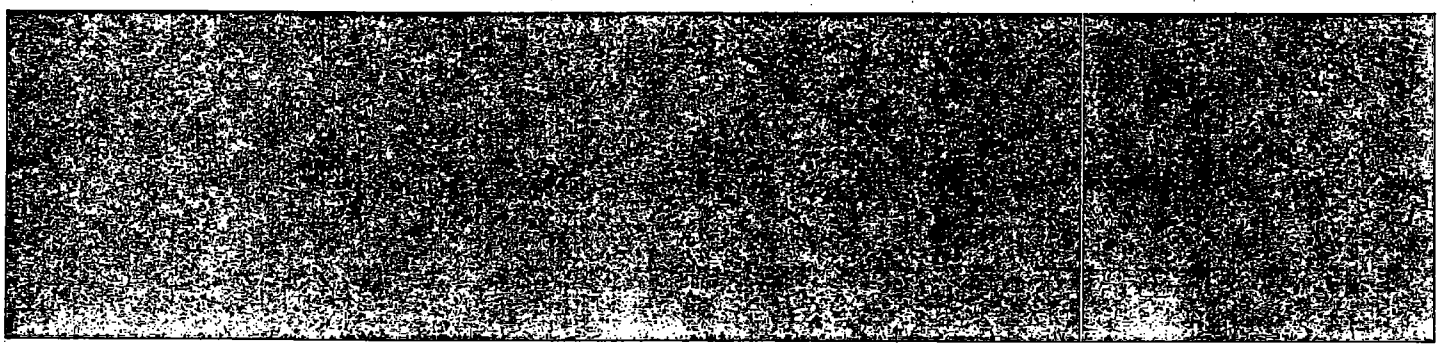
Cc:

Jay James
P.O. Box 507
Darlington, SC 29540
[Via email to pjlaw507@bellsouth.net and first class mail]

Renee Josey
Mr. Brandon Hylton
1831 W. Evans Street
Florence, SC 29501
[Via email to RJosey@turnerpadget.com, bhlton@turnerpadget.com and first class mail]

The Honorable Scott B. Suggs
Clerk Of Court,
Darlington County
1 Public Square, Room B-4
Darlington, South Carolina 29532
[hand-delivered]





From: Aimee Zmroczek [mailto:ajzlawfirm@gmail.com]
Sent: Monday, May 14, 2012 2:33 PM
To: Desa Ballard
Cc: Baxley, J. Michael Law Clerk (Mason W. King); Baxley, J. Michael Secretary (Jamie L. Capell); baxleyj@sccourts.org; Douglas Truslow; pjlaw507@bellsouth.net; RJosey@turnerpadget.com; Mara Ballard
Subject: Re: Tomorrow's hearing

Dear Judge Baxley:

First, I appreciate the Court's understanding in regard to my recent illness. Thank you for your patience and allowing me the time to provide the Court a proper response. I was asked by Mr. Megna, at your suggestion, to assist, him in the matters presently before you. (Exhibit "A") I sent Exhibit A via mail through my office, but have not received a filed copy back and therefore having my runner hand file another with the court today so I will include a filed copy as well as soon as it is brougtht back to me. Instead of continuing the hearing, and in the interest of judicial economy, I believe the matters can be resolved fairly quickly after reviewing the documentation. I have tried to simplify matters with as little of the emotion that has been involved in these matters as possible.

Mr. Truslow did not file an affidavit supporting any damages whatsoever in regard to the Amended Motion for Sanctions he filed in the circuit court as pursuant to your email dated March 16, 2012, (Exhibit "B") I respectfully submit Mr. Truslow has forfeited his rights to proceed under the terms of the order of this court, and he has abandoned his request for sanctions against Mr. Megna.

Should this Court feel this is a matter of fact to be determined at the hearing, I would respectfully request a few days to recover, from my illness, but I will avail myself to the hearing regardless of my health condition, in an effort matter to get this resolved. I will submit in a subsequent email an attached memorandum in support of my motion to dismiss/defend the position of Mr. Megna.

Thank you,
Aimee J. Zmroczek, Esq.

On Mon, May 14, 2012 at 10:39 AM, Desa Ballard <desab@desaballard.com> wrote:

> Mr. Megna had emailed Judge Baxley requesting continuance but I am forwarding your email to Judge Baxley so he knows our hearing is still on for tomorrow afternoon.
>
> Desa Ballard
>
> Ballard Watson Weissenstein (formerly Law Offices of Desa Ballard)
>
> Telephone 803.796.9299
>
> Facsimile 803.796.1066
>
> E-mail: desab@desaballard.com, copy to mara@desaballard.com
>
> Forwarded message:
>
> **From:** Aimee Zmroczek [mailto:ajzlawfirm@gmail.com]
> **Sent:** Monday, May 14, 2012 9:26 AM
> **To:** douglastruslow@truslowlaw.com
> **Subject:** Re: Anasti v. Wilson

Mr. Truslow:

I'm "working" from the house right now but I have my cell phone. I can be reached at 803-403-7750. I've emailed my paralegal and ask her to call your office as well do I can provide you with as much of the documentation that you have requested. I look forward to speaking with you

--

Aimee J. Zmroczek, Esq.

A.J.Z. Law Firm, LLC
1001 Washington Street, Ste. 207
Columbia, South Carolina 29201
Phone: (803) 400-1918
Fax: (803) 403-8005
E-mail: *ajzlawfirm@gmail.com*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 2007-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 2010-CP-16-0332
Appellant Case No. 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.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Supplemental Record on Appeal contains all material proposed to included by any of the parties and not any other material, and that Appellant has complied with the August 13, 2007 Order of the Supreme Court on Personal Data Identifiers.

James M. Griffin
Ariail E. King
LEWIS, BABCOCK, & GRIFFIN, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)

Columbia, South Carolina
March 21, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 2007-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 2010-CP-16-0332
Appellant Case No. 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.

PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin LLP, attorneys for Tony R. Megna, do hereby certify that I have served a copy of the foregoing **Supplemental Record on Appeal**, in connection with the above-referenced case by hand delivering a copy of the same to the following address:

Douglas Truslow
Truslow & Truslow
914 Richland Street
Columbia, SC 29201

Desa Ballard
Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Jaime Harmon

Columbia, South Carolina
March 21, 2014