

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

RECEIVED

JUN 17 2014

Appellate Case No. 2013- 000250

SC Court of Appeals

Adele J. Pope,.....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust;
Russell L. Bauknight, Individually, as former *Executor de son tort*, and in every
current and former fiduciary status claimed or held as to the Estate of James
Brown and the James Brown 2000 Irrevocable Trust,.....Respondents,

AND:

Robert L. Buchanan, Jr.,.....Interested Party.

APPENDIX

**Supplemental Return and Opposition to Motion of Russell L.
Bauknight, Individually, to be Dismissed as Party to above Appeal;
Sample Documents from Cases for Which Judicial Notice Under Rule
201(d) is Sought; Filing in Support of Unsealing Documents
in All Pending James Brown Appeals, Including
Appellate Case No. 2013-001649; No. 2014-000250; and No. 2014-000794**

Document [with emphasis added]

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3. "On Behalf of" Tommie Rae Hynie;
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 - b. Signed copy of AG's Legacy Trust which sued Buchanan and Pope in Wingate Suit or signed copies of Amendments do not exist.
 [But SEE p. 152 of Cert Petition Appendix, below.]
 - c. AG Wilson never saw the three signed pages of the Wingate 40% Litigation Retention Agreement used to sue Buchanan and Pope in 2010 in Wingate Suit
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Adele J. Pope
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Email: adele@popelawfirm.com

Pro Se

June 16, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT

Civil Action No. 2010 - GC 4008873

10 MAR 19 PM 1:10
FILED
APR 1 2010
PROBATE COURT
RICHLAND COUNTY, S.C.

FILED

SUMMONS

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B██████████; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L██████████ and Carrington L██████████; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B██████████; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY L██████████ and CARRINGTON L██████████; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adole J. Pope and Robert L. Buchanan, Jr.,
Defendants


Exhibit A-1

TO: THE DEFENDANTS, ADELE J. POPE AND ROBERT L. BUCHANAN, JR.:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Bverett A. Kandall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT

Civil Action No. 200-GC-4000073

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. [redacted]; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L. [redacted] and Carrington L. [redacted]; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B. [redacted]; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY L. [redacted] and CARRINGTON L. [redacted]; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

COMPLAINT
(Jury Trial Demanded)

PROBATE COURT
RICHLAND COUNTY, S.C.

10 MAY 19 PM 1:10

FILED

COME NOW THE PLAINTIFFS who, for their claim for relief against the Defendants, allege and will show as follows:

PARTIES

1. Russell L. Bauknight is the court-appointed Trustee of the James Brown 2000 Irrevocable Trust and the Trustee of the James Brown Legacy Trust. Bauknight is also the court-appointed Successor Personal Representative of the Estate of James Brown, the celebrated entertainer, who died on December 25, 2006, a resident of Aiken County, South Carolina. Bauknight serves in each of these capacities pursuant to a Settlement Agreement approved by Order of the Aiken County Circuit Court dated May 26, 2009.

2. Bauknight brings this action as Trustee of the James Brown 2000 Irrevocable Trust (hereinafter "the Trust") and as Trustee of the James Brown Legacy Trust, and as Personal Representative of the Estate of James Brown (hereinafter "the Estate"), and on behalf of the beneficiaries of the Estate and the Trusts. Bauknight is hereinafter referred to as "Trustee Plaintiff."

3. The following are parties to this action by virtue of their being beneficiaries of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust and/or the James Brown Legacy Trust. These Plaintiffs will hereinafter be referred to as the "Beneficiary Plaintiffs" and include:

a. Henry Dargan McMaster in his capacity as the Attorney General for the State of South Carolina;

b. Tommie Rae Brown, individually and on behalf of her minor child, James B~~rown~~;

¶;

c. Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown;

Complaint

Representatives and Trustees and appointed the Defendants Robert L. Buchanan, Jr. and Adele J. Popc as substitute Personal Representatives and Trustees.

15. Following additional litigation in the Alken County Circuit Court, the Beneficiary Plaintiffs entered a comprehensive settlement resolving all their disputes and ending the litigation between them, which agreement was, after an extensive hearing, approved by the Alken County Circuit Court by an Order entered on May 26, 2009. That Order also removed the Defendants as the substituted Personal Representatives and Trustees.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

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JUN 17 2014
SC Court of Appeals

16. All allegations set forth above are incorporated herein.

17. As Personal Representatives and Trustees of the Estate of James Brown and the James Brown 2000 Irrevocable Trust, the Defendants owed fiduciary duties to the Estate, Trust and the beneficiaries of each (collectively "The Affected Parties"), including a duty of care, of impartiality, and of loyalty as well as a duty to prudently administer the probate and trust estates.

18. Upon information and belief, during their appointment as substitute Personal Representative and Trustee, the Defendants repeatedly and chronically breached their fiduciary duty to the Affected Parties in multiple ways, including but not limited to the following particulars:

- a. Failing to properly manage the estate and trust;
- b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief, millions of dollars of lost opportunities for the estate and trust;
- c. Failing to use due diligence in pursuing business opportunities for the estate and trust;

Complaint

- d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;
- e. Mishandling an auction of personal property at great cost to the estate and trust;
- f. Failing to timely settle the debts of the estate;
- g. Failing to keep accurate accounting records for the estate and trust;
- h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
- i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for \$100 million in November 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;
- j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;
- k. Failing to account to the Attorney General as required by law;
- l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;
- m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;

Complaint

failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;

ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;

iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."

p. Engaging in conflicts of interest, such as

i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;

ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.

iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be \$5 million.

q. By misrepresenting or presenting inaccurate statements under oath to the Court;

r. By failing to file appropriate tax returns;

s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;

Complain

- t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and
- u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately \$5 Million in fees.

19. Despite the terms of the Order of May 26, 2009, removing the Defendants as Personal Representatives and Trustees, the Defendants have nevertheless continued to breach their fiduciary duties to the Affected Parties by continuing to take actions harmful to the estate and trust and the interests of the Affected Parties, including but not limited to contesting the settlement by filing multiple appeals and objecting to substitution, all to the detriment of the Affected Parties and in violation of their fiduciary duty to the Affected Parties.

20. As a result of Defendants' breach of their fiduciary duties to the Affected Parties, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A SECOND CAUSE OF ACTION
(Breach of Trust)

- 21. All allegations set forth above are incorporated herein.
- 22. The acts and omissions of the Defendants constitute a breach of trust pursuant to S.C. Code Ann. § 62-7-1001(a).
- 23. As a result of Defendants' breach of trust, Plaintiffs are entitled to an order

Complaint

(c) diminution in the future stream of profit and income from the corpus of the Estate and Trust.


29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

WHEREFORE, The Plaintiffs pray for a judgment against the Defendants for, relief as set forth above, actual and punitive damages in such sums as may be proven at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

PLAINTIFFS DEMAND A JURY TRIAL.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B██████; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney L██████ and Carrington L██████; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B██████; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY L██████ and CARRINGTON L██████; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Plaintiffs,

v.

Adele J. Pope and Robert L. Buchanan, Jr.Defendants.

OF WHOM:

Adele J. Pope is thePetitioner.

PLAINTIFFS' MOTION TO DISMISS NOTICE OF APPEAL
AND PETITION FOR WRIT OF PROHIBITION

Exhibit A-2

NPCOL1:2258260.1

Pursuant to the provisions of Rule 240(e), SCACR, the Plaintiffs respectfully request that this Honorable Court dismiss¹ Petitioner's Writ of Prohibition and notice of appeal.

INTRODUCTION & PROCEDURAL HISTORY

As this Court is aware from the Dallas and Cannon appeals wherein Adele Pope and Bob Buchanan (Pope and Buchanan) filed numerous contentious motions objecting to Mr. Bauknight's substitution, Pope and Buchanan were removed from their prior fiduciary positions on May 26, 2009, pursuant to the global settlement agreement and court order resolving the James Brown Estate and Trust litigation.

The underlying lawsuit concerns several serious breach of fiduciary duty claims filed by Plaintiffs—Tommy Rae Brown (James Brown's surviving spouse), the Brown children, the James Brown's Estate and Trust, and the South Carolina Attorney General—on behalf of the charitable beneficiaries against former Personal Representatives and Trustees Pope and Buchanan. When the James Brown Estate and Trust was turned over to Mr. Bauknight, it was unfortunately in a state of ruin. It had been mismanaged and was on the brink of insolvency.

The mismanagement of the James Brown Estate and Trust included, but was not limited to, Pope and Buchanan's failure to conduct and obtain an estate valuation in order to properly ascertain the taxable estate, improperly paying themselves fiduciary fees, and failing to file required estate, trust, and other income tax returns. As a result of Pope and Buchanan's actions, the Estate and Trust have incurred significant damages for which the underlying lawsuit in this matter seeks redress.

Pursuant to the South Carolina Probate Code, the underlying lawsuit was filed in Richland County Probate Court. Later, the case was removed to the circuit court pursuant to

¹ Plaintiffs respectfully reserve the right to file a Return and a motion to dismiss on the merits.

section 62-1-302(d). Pope and Buchanan objected to venue and filed a motion to dismiss or in the alternative to transfer venue. The Honorable Judge Manning held a hearing for the full airing of Petitioner's position, and after careful consideration, denied Pope and Buchanan's Motions on November 8, 2010. On January 7, 2011, Judge Manning denied Pope and Buchanan's motion to reconsider. With no basis in law, Pope² (Petitioner) is trying to appeal from Judge Manning's denial of the motion to dismiss, motion to transfer venue, and motion to reconsider. Joined with her notice of appeal, is a petition for writ of prohibition. Neither filing is proper. For the foregoing reasons the notice of appeal and writ of prohibition should be dismissed.

WRIT OF PROHIBITION

The Writ of Prohibition exists "to prevent the assumption and exercise of jurisdiction by a lower tribunal in cases where wrong, damage and injustice are liable to follow such action." *State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602 (1938). "It [should] be granted only 'to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure.'" *Id.* Furthermore, it "should be used with forbearance and caution, and only in cases of necessity." *Id.*

South Carolina case law provides that the "necessity" to issue the writ does not exist, however, for the "correct[ion] [of] errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available." *Id.* Even more, "the writ may not be invoked to perform the office of appeal." *Id.*

² Mr. Buchanan has withheld his name from the present petition.

302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts.” Pursuant to section 62-1-302(d), the matter was removed to the circuit court. Because the lower court has jurisdiction, the writ is not proper.

C. Even Assuming the Circuit Court Improperly Assumed Jurisdiction, the Writ is Not Proper for Petitioner Has an Adequate Remedy by Appeal

Alternatively, Petitioner may not invoke the writ for she has an adequate remedy by appeal. As previously noted, the writ may not be issued for the “correct[ion] [of] errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption of jurisdiction, *where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available.*” *State Bd. of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602 (1938).

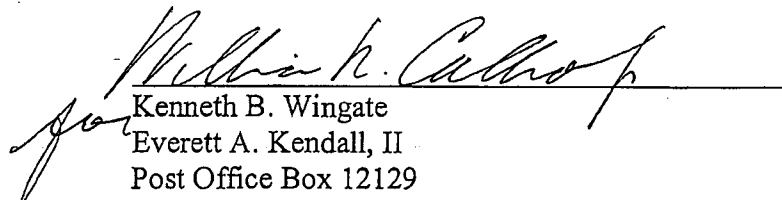
Again, although Petitioner has used grave language to describe the underlying lawsuit, the Honorable Judge Manning did not see it that way and denied the motion to dismiss. If the circuit court made an error of law, then Petitioner may seek appellate review at the appropriate time. Because appellate review of the underlying lawsuit is available at a later stage in the proceeding, as a matter of law, the writ of prohibition does not lie. *State Bd. of Bank Control, supra.*

CONCLUSION

Petitioner has filed a notice of appeal that seeks this Court’s review of a circuit order that is not immediately appealable. Without question, the notice of appeal is in direct contravention

of settled South Carolina law. Filed with the notice of appeal is a petition for a writ of prohibition seeking to prevent Plaintiffs from lawfully pursuing civil damages the Estate and Trust incurred from the previous negligent management of Petitioner (and Mr. Buchanan). Petitioner's request should be denied. Based on the foregoing reasons, the Court should dismiss the writ of prohibition and the appeal.

SWEENEY, WINGATE & BARROW, P.A.


Kenneth B. Wingate
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Post Office Box 12129
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(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
February 28, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-4900

Russell Bauknight, et al.,)
)
 Plaintiffs,)
)
 vs.) TRANSCRIPT OF RECORD
)
 Henry Dargan McMaster, et al.,)
)
 Defendants.)
 _____)

August 30, 2010
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

KENNETH B. WINGATE, ESQUIRE
EVERETT A. KENDALL, II, ESQUIRE
Attorneys for Plaintiffs

DARYL L. WILLIAMS, ESQUIRE
J. CALHOUN WATSON, ESQUIRE
Attorneys for the Defendants

Crystal Holmes

Exhibit A-3

1 MR. WINGATE: May it please the Court, Your
2 Honor. Ken Wingate along with my partner, Rhett
3 Kendall.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And we are before you today in
6 connection with the Irrevocable Charitable Trust
7 established by the entertainer James Brown.

8 As Your Honor is aware from the pleadings,
9 our firm represents the 15 or so Plaintiffs listed on
10 the caption of the case which include globally all of
11 the beneficiaries of this Irrevocable Trust, both the
12 charitable and private individuals.

13 I would ask that Your Honor -- well, first,
14 let me introduce -- we're here representing, as you're
15 aware from the caption, an array of folks. I believe
16 Your Honor knows Sonny Jones ---

17 THE COURT: Yes.

18 MR. WINGATE: --- an attorney with the South
19 Carolina Attorney General's office, one of our
20 clients. Also we represent Russell Bauknight who is
21 very critically, Your Honor, the professional Trustee
22 of this Trust. I'll just come back and address that
23 in a moment. His counsel, Freddie Kingsmore is here
24 with us today. And then one of the family members,
25

1 MR. WINGATE: Well noted. Your Honor, we knew
2 that exactly what did happen right before the lunch
3 break would nappen.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And that is there'd be a whole
6 big bowl of spaghetti, all these lawsuits that have
7 been filed, whip them up, stir them up, mix them up,
8 throw out a quote, throw out a pleading, throw out a
9 caption and try to confuse the matter and say only
10 Jack Early could possibly sort through this mess.

11 This is real simple, Your Honor. There are
12 two different things. There is the Last Will and
13 Testament of James Brown. This is in Aiken County in
14 the Probate Court -- well actually it's in Circuit
15 Court in Jack Early's hands.

16 This, Your Honor, is the 2000 Irrevocable
17 Charitable Trust of James Brown which was created as a
18 separate entity prior to his death which was 2000, he
19 died December of '06. Was funded prior to his death
20 and is an entirely separate entity. And what we're
21 here for, Your Honor, we're going to sort of split
22 things. As you heard before lunch, counsel has been
23 arguing both on their Motion to Dismiss the
24 Plaintiffs' Complaint ---
25

1 THE COURT: And venue, right.

2 MR. WINGATE: --- and the transfer of venue
3 and have said that they all sort of tie together.
4 Well, that's again part of this stirring up a bowl of
5 spaghetti, just trying to make it all sound too
6 complex. It really is a pretty straightforward
7 analysis.

8 We submitted, Your Honor, on Friday, a brief
9 -- and I would just point out that at the bottom of
10 page 2 and at the bottom of page 3 are two different
11 diagrams of the estate plan of James Brown. And it
12 really helps to show the flow of things.

13 THE COURT: I don't know whether it's made it
14 to the file, let me double check. Do you have an extra
15 copy?
16

17 MR. WINGATE: I don't -- I have one that's
18 got a highlight on it if you don't mind that.

19 THE COURT: If they don't mind. Y'all have a
20 copy of this, don't you?

21 MR. WATSON: Yes, Your Honor.

22 THE COURT: And at the bottom of page 2, Your
23 Honor, is the estate plan which shows the Will, the
24 document I showed you just a second ago, that's over
25 there in Aiken, which pours over or gives the assets

1 upon James Browns' death to his Irrevocable Trust.
2 And then that Irrevocable Trust splits into two parts,
3 fifty percent of it was the I Feel Good Trust, a
4 Charitable Trust for the education of students in
5 South Carolina and Georgia, and then the other fifty
6 percent for his family.

7 During the course of the last several years
8 of litigation which has gotten so much attention,
9 there was a settlement that was achieved, Your Honor,
10 and this global settlement that brought all 15 of
11 these people together on this caption into one group,
12 rewrote the estate plan, rewrote the terms of the
13 Trust. And the revised Trust is what Your Honor sees
14 on page 3, the second diagram that's at the top of
15 that chart.

16
17 THE COURT: All right.

18 MR. WINGATE: And again, Your Honor, you see
19 that Will just sits over there in Aiken. The Estate
20 administration is over in Aiken. But the Settlement
21 Trust, the Charitable Trust that receives the
22 royalties, the intangible assets, the intellectual
23 property of James Brown, is then administered in
24 Richland County, South Carolina by Russell Bauknight,
25 the Trustee, for the purpose of, as you see on that

1 chart, a Charitable Trust that remains for education
2 purposes, why the South Carolina Attorney General is
3 in this case as one of our client Plaintiffs, and is
4 about ---

5 THE COURT: The AG, they came in by agreement
6 by everybody, the AG ---

7 MR. WINGATE: That is correct, Your Honor.

8 THE COURT: As it says here, sole authority
9 to remove and replace Trustees, is that fair enough?

10 MR. WINGATE: (Affirmative response.)

11 THE COURT: Everybody?

12 MR. WILLIAMS: That is, as I ---

13 THE COURT: That's what it says.

14 MR. WILLIAMS: As I understand it, that is
15 what the -- what is provided in the Settlement
16 Agreement. That is not what was provided in the
17 original estate plan ---

18 THE COURT: Okay.

19 MR. WILLIAMS: -- of Mr. Brown.

20 THE COURT: That's good enough. That's good
21 enough.

22 MR. WILLIAMS: Just so you know.

23 THE COURT: Okay.

24 MR. WILLIAMS: It's not completely accurate.
25

1 Your Honor in the brief, clearly say that exclusive
2 subject matter jurisdiction of trust matters lies in
3 the Probate Courts in South Carolina. And as you
4 asked earlier this morning at 9:00, is this an appeal
5 or what is this? This is probate, isn't it?

6 This was filed by Russell Bauknight and the
7 Attorney General and all of the family members
8 globally in the Richland County Probate Court as a
9 Trust lawsuit

10 THE COURT: All right.

11 MR. WINGATE: And then it was moved to Your
12 Honor to the Circuit Court. So subject matter
13 jurisdiction unquestionably has been properly
14 satisfied. This suit was initiated in the Probate
15 Court. All we're arguing about is venue and we would
16 show Your Honor that respectfully and simply, it's
17 right here in Richland County. There's nowhere else it
18 could be.

19 THE COURT: All right. Thank you, sir.

20 MR. KENDALL: Thank you, Your Honor, and I
21 will -- I will also be brief because I know we have
22 lots of counsel waiting.

23 Unfortunately, the issue has been confused in
24 part because so many issues were thrown out in the
25

1 the breach of fiduciary duties, breaches of trust and
2 negligent acts of these two individual.

3 So there -- they can -- in fact you'll find
4 it interesting in the record, there is not a single
5 petition attached to any of the documents they've
6 provided you. They haven't ever given you the
7 Compliant that says, here's where they're trying to do
8 the same things before. Instead what they've done is
9 cite some dicta from various things taken out of
10 context and incomplete in its rendering to the Court.

11 For example, the -- they contest 18(a) of the
12 Complaint or allegation 18(a) of the Complaint which
13 is, in fact, a very general thing, that they failed to
14 administer the Trust properly. And they point to an
15 Order of Feb -- of April 8th of 2008 where it says
16 that Judge -- that they say Judge Early says that
17 they've done everything right. Well, that's not at
18 all what Judge Early says. And in fact, since they
19 administered this Estate for another year or more
20 after that Order, it wouldn't matter what he was
21 ruling on in that regard.

22 But if you look to the record which they
23 didn't provide you, you find out that in fact that was
24 a procedural question about whether their appointment
25

1 was proper. And so there was issues raised about --
2 about the -- the procedure used and also whether they
3 could represent both the Trust and the Wills and his
4 statement was, they have properly served. And I
5 believe he meant that in both equitably and procedural
6 terms, not in substantive terms because there was no
7 hearing on that issue. There was no time at which any
8 of this evidence was put before the Court. And they
9 didn't bring that evidence because it's not here.

10 And, Your Honor, the mishandling of the
11 auction. The only thing they gave you in reference to
12 that is Orders that authorize the Christie's Auction
13 and you'll find that there's no Order that ever says
14 that they did it right. In other words, just because
15 the Court has handed them the keys to the car doesn't
16 mean the Court has authorized them to run into a brick
17 wall.

18
19 THE COURT: By the way, I watched Train last
20 night with Elmer Gantry? Who played Elmer Gantry?
21 Help me out.

22 MR. WINGATE: I can't help you on that one.

23 THE COURT: You guys are really a big help.
24 Go ahead. I'll think of it in a minute. Train, The
25 Great 1944, going to steal all the artwork out of

1 defenses they have raised.

2 And for example, the issue of the Attorney
3 General's constitutional and statutory authority to
4 bring this claim. Judge Early's already ruled on
5 that. In fact, this is just another effort to attack
6 that issue. In fact, we've provided that Order to
7 you. We've also provided an Order in another case
8 where the same issues were raised. Judge Couch looked
9 at this issue and said, yeah, you can -- the Attorney
10 General has the constitutional authority.

11 The representations about the California
12 case, the context of that has not been fully explained
13 to the Court here. Sonny Jones was in California
14 during that hearing. He knows it very well and
15 provided it to me during lunch about some of the --
16 the incorrect characterizations that may have
17 occurred. And so, Your Honor, I may supplement to
18 fully explore that issue at some time, if I may have
19 leave of the Court to do that or include it in our
20 proposed Order. I'll come back to that.

22 But the issues of the use of contingency fee
23 agreement have already been raised but those are
24 reasons to dismiss this case. That may be a basis for
25 disqualifying me but not to dismiss the lawsuit. So



SWEENEY WINGATE & BARROW P.A.

June 11, 2014

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

VIA E-MAIL: adam@silvernaillawfirm.com

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Adam:

Please accept this letter as response to your June 4, 2014 email concerning the possible viability of a "second" mediation in case 4900.

First, there have already been two mediations. Your client refused to participate in the first, which successfully resolved the case with respect to Bob Buchanan, and she participated in the second only due to a court order. What you are proposing would be a third mediation.

Second, our position remains that we are judicially conflicted at this point from representing the Plaintiffs' group as a group and do not see how mediation could be arranged due to these conflicts.

Third, your client's position at the last mediation was totally unrealistic, unhelpful, and amounted to a waste of many people's time and money. Even assuming the judicially created conflicts could be waived for mediation, there is no reason to believe that your client has any reasonable proposal to offer or that she understands the reality of her situation post Wilson v. Dallas.

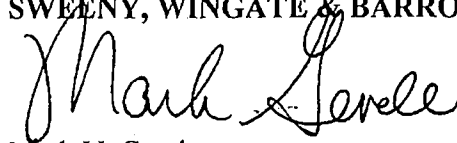
However, in the spirit of exploring every possible avenue to see this if this matter can be resolved, if you have additional information that would demonstrate that your client is interested in a truly good faith resolution of case 4900, that does not seek to reinstate or involve her in any

Exhibit A-4

capacity with the James Brown Estate, Trust, entities (pro bono positions included), and that does not include Bob Buchanan, who is settled and done, please let me know.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in cursive script that reads "Mark V. Gende". The signature is written in dark ink and is positioned directly below the firm name.

Mark V. Gende

MVG/ljm

Cc: Daryl L. Williams, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
)
FIFTH JUDICIAL CIRCUIT)

Russell L. Bauknight, as Trustee of the James)
Brown 2000 Irrevocable Trust and the James)
Brown Legacy Trust, as Personal)
Representative of the Estate of James Brown,)
and on behalf of Henry Dargan McMaster, in)
his capacity as Attorney General of the State)
of South Carolina; Tommie Rae Brown,)
individually and on behalf of her minor child,)
James B. [redacted]; Daryl J. Brown, individually and)
on behalf of his minor child Janise B.;)
Lindsey Delores Brown; Deanna J. Brown)
Thomas; Jason Brown-Lewis; Yamma N.)
Brown, individually and on behalf of her)
minor child Sydney L. and Carrington L.;)
Tonya Brown; Venisha Brown; Larry Brown;)
and Terry Brown)

Civil Action No.: 2010-CP-40-4900

2010 SEP 30 PM 1:07
FILED
RICHLAND COUNTY
JEANETTE W. McBRIDE
C.C.P. & G.S.

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE

AND)

(Jury Trial Demanded)

Henry Dargan McMaster, in his capacity as)
Attorney General of the State of South)
Carolina; Tommie Rae Brown, individually)
and on behalf of her minor child, James B. [redacted];)
Daryl J. Brown, individually and on behalf of)
his minor child Janise B.; Lindsey Delores)
Brown; Deanna J. Brown Thomas; Jason)
Brown-Lewis; Yamma N. Brown,)
individually and on behalf of her minor child)
Sydney L. and Carrington L.; Tonya Brown;)
Venisha Brown; Larry Brown; and Terry)
Brown,)

Plaintiffs,)

vs.)

Adele J. Pope and Robert L. Buchanan, Jr.,)

Defendants.)

Defendants Robert L. Buchanan, Jr. and Adele J. Pope, subject to their Motion to Dismiss and any Motion filed or to be filed for a change of venue, answer the Complaint of Plaintiffs and Counterclaim against Plaintiffs, as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)
As to Parties

1. (a) The following general allegations are incorporated by reference in Defendants' responses to each and every allegation contained in the Complaint, including the prayer for relief:

(i) Henry Dargan McMaster ("McMaster"), the Attorney General of South Carolina ("AG") brings this private tort suit on behalf of persons disinherited in James Brown's carefully crafted estate plan. The Attorney General's duty is to serve the public interest, not private interests.

(ii) On August 10, 2008, McMaster and some of the Plaintiffs met to divide what Mr. Brown did not give them. As part of their plan, Plaintiffs agreed that the Defendants, who were dutifully defending Mr. Brown's estate plan, should be removed as PR/Trustees.

(iii) The plan agreed to give Tommie Rae Hynie Brown, who had been disinherited, more than \$20 million. It further provided that five of Mr. Brown's dozen or more children would receive approximately \$4 million each.

(iv) Five months later on January 30, 2009, McMaster entered into an agreement with Mr. Brown's son Terry, who did business with discredited former trustee Dallas and now-indicted former trustee Cannon, in which Terry received a 10-year right to buy all of James Brown's assets. This not only destroyed the value of Mr. Brown's assets, it threatened loss of the IRS qualification of Mr. Brown's "I Feel Good" Trust, which is part of the 2000 Trust (the "Trust").

(v) When the dealing was done, McMaster and the other Plaintiffs had stripped about 65% of Mr. Brown's \$85 million music empire from his estate plan. Upon information and believe, Plaintiffs had placed under McMaster's control not only Mr. Brown's "I Feel Good" private foundation but also Mr. Brown's estate and the Brown Grandchildren's Education Trust, which is also a part of the Trust. Furthermore, the plan gave McMaster the right to remove and replace personal representatives and trustees.

(vi) The circuit court's approval of Plaintiffs' actions is on appeal to the Supreme Court. The Supreme Court will determine if Plaintiffs can do all this. The Supreme Court will determine if after removing Defendants, the lower court, at McMaster's request, may require them, under penalty of contempt, to sign documents which they cannot sign while properly performing their duty to James Brown. The Supreme Court will determine if the lower court, at McMaster's request, will require Defendants to agree to say nothing bad about McMaster's deals or about McMaster himself.

(vii) Upon information and belief, James Brown anticipated trouble with his estate

plan, and he stated what he expected of his fiduciaries:

"... any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument... shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries." [Tr. Art. XXI; See Will Item X for similar provision. Emphasis Supplied.]

(viii) Mr. Brown's clear intention was to dedicate his entire music empire solely to the education of certain grandchildren and needy and deserving students:

"Except as otherwise provided... I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake... It is the Grantor's intention that the trust estate be available only to the beneficiaries and not to the Grantor's past or future spouse. The Trustee(s) are directed to enforce this provision." [Emphasis supplied.] [Will, p1; Tr. Art XVIII, XXII.]

(ix) James Brown intended to establish what may be South Carolina's largest private foundation dedicated solely to the education of needy students. The Supreme Court will decide whether to uphold Plaintiffs' contracts to dismantle that foundation. Whatever the Court may decide, Defendants' record of service proves that Defendants properly managed the 2000 Trust and Mr. Brown's estate. As directed by Mr. Brown, Defendants vigorously defended his estate plan.

(x) Upon information and belief, \$50 million loss to Mr. Brown's estate and the 2000 Trust, as well as significant damages to Defendants have been inflicted upon them by Plaintiffs and by others acting in Plaintiffs' behalf.

(xi) Upon information and belief, Defendants allege that Plaintiffs have combined in their efforts to establish an unrealistically low value of the assets of James Brown as much for the purpose of interfering with Defendants' commissions, thereby causing them special harm, as for the purpose of enabling a purchasing entity, in which one or more Plaintiffs or their family members will own an interest, to acquire assets worth \$80-to-\$100 million or more for as little as \$12 million.

(b) More specifically with respect to the allegations of paragraph 1 of the Complaint, Defendants allege as follows:

(i) Defendants admit that James Brown was a celebrated entertainer who died on December 25, 2006, a resident of Aiken County, South Carolina.

(ii) Defendants admit that Bauknight serves as court-appointed Trustee of the James Brown 2000 Irrevocable Trust and as Personal Representative of the Estate of James Brown, with the qualification that his service is based only on a settlement between McMaster and some of the Plaintiffs, none beneficiaries of the 2000 Trust; Defendants further admit that the lower court appointed Bauknight and approved the settlement, with the qualification that Defendants were not removed for cause and the order is not final and is on appeal before the Supreme Court.

(iii) Defendants admit, upon information and belief, that Bauknight is the Trustee of the Legacy Trust to which Mr. Brown gave nothing, which was created solely by contract of Plaintiffs Bauknight, McMaster, Hynie Brown and the Brown Family LLC; further, the Defendants allege the Legacy Trust is not a part of Mr. Brown's estate plan, and the lower court order approving the contract and appointing Bauknight is not final and is on appeal before the Supreme Court.

(iv) Except for the qualified admissions above, the allegations of paragraph 1 of the Complaint are denied.

2. With respect to the allegations of paragraph 2 of the Complaint:

(a) Defendants deny having any duty to the Legacy Trust or its beneficiaries.

(b) Defendants admit that Bauknight brings this action as PR/Trustee of the Estate and Trust of James Brown based solely on a settlement approved by the lower court, which is now on appeal to the Supreme Court.

(c) Defendants allege that Bauknight's interests conflict with the interests of the beneficiaries of the Estate and Trust.

(d) All allegations of paragraph 2 of the Complaint that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

3. With respect to the allegations of paragraph 3 of the Complaint, Defendants allege as follows:

(a) With respect to McMaster, Defendants deny: (i) that McMaster has standing or is authorized to bring a private tort suit against or concerning a 501(c)(3) private foundation or its agents to benefit the family at the expense of the needy and deserving children

desiring an education for the reasons hereinafter more fully alleged; (ii) that McMaster has standing or is authorized to dismantle the grandchildren's education trust, especially as some grandchildren have expressly objected to the settlement; (iii) that McMaster has standing or is authorized to take over the estate of a decedent; (iv) that McMaster has standing or is authorized to commence an action to recover money damages for private individuals; (v) that Bauknight has standing or is authorized to commence a lawsuit for McMaster under any circumstances, and especially, as here, where McMaster cannot act, and (vi) that private counsel for private parties may simultaneously represent McMaster in this action.

(b) With respect to Tommie Rae Hynie Brown and James B. ~~Brown~~

(i) Defendants deny Tommie Rae has standing because she was not included in Mr. Brown's estate plan; she is limited by a pre-nuptial agreement she signed before the 2001 marriage ceremony with Mr. Brown; she was married to another man when she conducted the marriage ceremony with Mr. Brown in 2001; after a 2004 annulment of the marriage pursuant to Mr. Brown's claim to void their marriage, she contracted never to claim to be Mr. Brown's common law wife, which was incorporated into an Aiken County Family Court order; she did not marry Mr. Brown after the annulment; she is not listed as Mr. Brown's spouse on his death certificate.

(ii) Defendants deny James B. has standing because he is specifically excluded from Mr. Brown's estate plan even if a child; he has refused to undergo the official Estate and Trust DNA protocol to demonstrate paternity; he is a minor and has a guardian ad litem ("GAL") in other court proceedings related to the Estate and Trust, but he has no GAL in this litigation; he cannot be represented by his mother in this case because of her conflict of interest.

(c) With respect to Daryl J. Brown and his minor child Janise:

(i) Defendants deny that Daryl has standing because he is not a beneficiary of the 2000 Trust, and, on information and belief, his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(ii) Defendants deny that Janise has standing because, as one of the seven beneficiaries of the Brown Family Education Trust (the Grandchildren's Education Trust), she has a potential education fund of about \$285,000.00, and the appointment of a guardian ad litem ("GAL") for her is necessary because her father's settlement eviscerates this educational benefit and his attack on the estate plan as her representative may subject her to forfeiture under the *In Terrorem* clause as well.

27. Defendants deny the allegations of paragraph 27 of the Complaint.
28. Defendants deny the allegations of paragraph 28 of the Complaint.
29. Defendants deny the allegations of Paragraph 29 of the Complaint.

AS TO THE PRAYER FOR RELIEF

30. Defendants deny that Plaintiffs are entitled to any relief against Defendants alleged in their prayer for relief.

AS TO ALL ALLEGATIONS OF THE COMPLAINT

31. All allegations of the Complaint, including the allegations contained in the prayer for relief, not hereinabove admitted, qualified or explained are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Standing)

32. All allegations previously set forth herein are incorporated herein.
33. All Plaintiffs lack standing to bring this action under the Article IV of the Will, and Item XXI of the 2000 Trust, and as otherwise alleged in paragraph 3 above, and the case should be dismissed with costs taxed to Plaintiffs.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION
(AG's Exceeding and Abusing Authority)

34. All allegations made above are incorporated herein where relevant.
35. Defendants are informed and believe that McMaster has a duty to defend the "I Feel Good" private foundation and its agents from private tort suits intended to dissipate Brown's scholarship funds for needy and deserving students.
36. McMaster's private contracts and acts and omissions related to the contracts and this litigation serve no public purpose; exceed and/or abuse his constitutional and statutory

authority; and violate the due process and First Amendment rights of Defendants and all other fiduciaries and beneficiaries of the 2000 Trust and Will other than Bauknicht, who serves at McMaster's pleasure; and generally constitute bad faith and violate the public trust; the case should be dismissed with costs taxed to Plaintiffs.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Affidavit Required by S.C. Code Ann. §15-36-100 (Supp. 2005))

37. All allegations made above are incorporated herein where relevant.

38. Plaintiffs failed to file as part of the Complaint an affidavit of an Expert Witness specifying at least one negligent act or omission claimed to exist and the factual basis therefore, as a result of which the case should be dismissed for failure to state a claim.

FOR A FIFTH DEFENSE
(Charitable Immunity for Private 501(c)(3) Foundations)

39. All allegations previously set forth herein are incorporated herein.

40. Defendants are informed and believe their actions as agents protecting the "I Feel Good" private foundation, a 501(c)(3) private foundation, have the same statutory immunity and protection from private tort suits as agents of public charities to ensure: (a) that qualified trustees, like Defendants, will accept such positions without fear of financial ruin of the very kind Plaintiffs are attempting to inflict by this lawsuit, and (b) the scholarship funds of the "I Feel Good" private foundation will not be depleted directly or indirectly in the defense of those who properly protect and serve it.

41. Defendants are informed and believe this lawsuit must be dismissed with prejudice and with costs taxed to Plaintiffs.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION
(Improper Venue, Rule 12(b)(3), SCRCP)

42. All allegations previously set forth herein are incorporated herein.

settlement, and it is not a party to this action.

48. Defendants are informed and believe that in the absence of their joinder, the case should be dismissed.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION
(Estoppel)

49. All allegations made above are incorporated herein where relevant.

50. Plaintiffs have engaged in conduct during relevant times which was calculated to convey the impression that the facts were otherwise than and inconsistent with those they now seeking to assert, including at least the following conduct:

A. AS TO AG McMASTER:

(i) On July 30, 2008, AG McMaster, personally, wrote a letter to Defendants supporting their service as PRs and Trustees.

(ii) AG McMaster has ratified the Will and Trust which Defendants seek to uphold.

B. AS TO TOMMIE RAE BROWN:

(i) Prior to her 2001 ceremonial marriage to Mr. Brown, she executed a Pre-Nuptial Agreement in which she waived all rights as a spouse to share in or make any claim against the estate of Mr. Brown; all rights as a spouse in the property of Mr. Brown; any spouse's right of election or claim as an omitted spouse against Mr. Brown's estate under the law of any state; and any right to serve as a fiduciary under Mr. Brown's estate.

(ii) During Mr. Brown's 2004 action against her to void the marriage, Tommie Rae contracted never to claim to be Mr. Brown's common law spouse.

(iii) She admits and has complained that after the 2004 annulment, Mr. Brown would not marry her again.

(iv) She claims to have been a member of the Advisory Board to the Trust that Defendants are seeking to uphold.

(v) She has otherwise ratified the Will and Trust which Defendants seek to uphold.

C. AS TO DEANNA J. BROWN THOMAS AND YAMMA BROWN:

FOR AN ELEVENTH DEFENSE TO ALL CAUSE OF ACTION
(Unclean Hands)

58. All allegations made above are incorporated herein where relevant.

59. Defendants are informed and believe that in early January 2007, certain Brown family members (all Plaintiffs in this case) met with lawyers in Atlanta, GA and formulated a plan to sabotage Mr. Brown's carefully created estate plan with the objective of acquiring assets he expressly declined to give them; contemporaneously, Tommie Rae assembled a team of at least six lawyers to attempt to take up to half of Mr. Brown's assets, to which she was not entitled.

60. Defendants are further informed and believe that in early January 2007 Dallas and Cannon and others, who had their own pecuniary agenda, began manipulating evidence as to the ownership of assets in an effort to preclude or minimize the opportunities of the family and Tommie Rae.

61. Within those dynamics, the family and Tommie Rae sued in or around January 2007 to remove Dallas, Cannon and Bradley as fiduciaries, many relying on the estate plan they now seek to dismantle for their standing.

62. Defendants are further informed and believe that in approximately March of 2007, Dallas and Cannon successfully solicited Forlando Brown, a grandson of Mr. Brown who plans to own the James Brown assets and had participated in the family meeting in Atlanta in January and February, to abandon the family and join them. His brother, Romunzo Brown, and his father, Terry Brown, joined Forlando in abandoning the family and aligning themselves with Dallas and Cannon.

63. Within these dynamics, in an effort to calm all parties, the Aiken County Circuit Court appointed Defendants as non-fiduciary SAs of the Estate on March 7, 2007, with limited

authority.

64. Almost immediately, the family, Tommie Rae and Dallas and Cannon undertook to promote their own individual interests; and though adverse to one another in other respects, the family and Tommie Rae were united in their opposition to Dallas, Cannon and Bradley. As a result, Dallas and Cannon became defensive and uncooperative, and they began to resist Defendants' scrutiny.

65. Despite the resistance of Dallas and Cannon, on July 17, 2007, Defendants discovered Cannon's \$900,000 misappropriation from the Trust. Nevertheless, Cannon resigned on August 10, 2007 from all positions, fiduciary and otherwise, with the Estate, the Trust and most Brown business entities.

66. Eventually, Dallas and Cannon undertook, individually and through certain agents, to falsely convince the AG that Defendants were bad. The Office of the AG was receptive to the efforts of Dallas and Cannon.

67. As a result of continuing scrutiny and pressure, Dallas and Bradley resigned as Estate and Trust fiduciaries at a hearing on November 20, 2007, rather than defend against the case for their removal.

68. Immediately upon the resignation of all three fiduciaries and with no advance notice, the Court appointed Defendants as substitute PRs and Trustees. All Plaintiffs except for Bauknight and the AG supported and encouraged the appointment.

69. By their appointment, Defendants were charged with the legal duty of upholding Mr. Brown's Will and Trust. Brown's Will and Trust were contrary to the interests of the family and Tommie Rae.

70. By November 21, 2007, Dallas, Cannon and Bradley were experiencing second

thoughts about their resignations, and Assistant AG Jones had communicated with Pope, insisting that Defendants resign immediately as PRs and Trustees or risk removal proceedings. They, and the other Plaintiffs, thereafter engaged in the following activities:

- (a) Accusing Buchanan and Pope of impropriety in November 2007 after having just represented to the Court that Defendants' behavior was extraordinary;
- (b) Threatening Buchanan and Pope with grievances, harm and liability for not agreeing with the settlement;
- (c) Asserting Buchanan and Pope should have obtained appraisals after having reviewed and acquiesced in or adopted Defendants' proposal to value assets without an appraisal;
- (d) Sabotaging the Christies' auction in violation of court orders;
- (e) Falsely accusing Defendants of impropriety with intent to damage their professional standing.

71. Such inequitable conduct touched Defendants personally, touched the subject matter of this litigation and prejudiced or injured Defendants as hereinafter more fully alleged, as a result of which this litigation should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR A TWELFTH DEFENSE
(Comparative Negligence/Recklessness/Willfulness)

72. All allegations previously set forth herein are incorporated herein.

73. To the extent that Plaintiffs are entitled to anything, and to the extent Defendants were careless, negligent, grossly negligent, willful, wanton or reckless in any particular, which is denied, Plaintiffs were more than fifty percent (50%) negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton in the particulars hereinabove alleged, and as to certain Plaintiffs in the following additional particulars, which upon information and belief, include the

following:

(a) AS TO AG McMASTER:

- (i) In failing to determine the heirs of James Brown.
- (ii) In unreasonably attempting to agree with others as to the identity of the heirs of James Brown to the exclusion of real heirs, and with insufficient understanding or inquiry into the negative impact this incorrect finding has on the Estate and Trust's rights under the Federal Copyright Act.
- (iii) In unreasonably executing three different settlement contracts (August 10, 2008, the Legacy Trust and the January 29, 2009 contract), with insufficient understanding that they exposed an estate that would pay no estate taxes under the estate plan to between \$10 and \$40 million of estate taxes.
- (iv) In unreasonably executing the Legacy Trust with insufficient understanding that it would disqualify the "I Feel Good" private foundation under 501(c)(3) of the IRC, exposing the estate and 2000 Trust to millions of dollars of estate and income taxes.
- (v) In unreasonably failing to recover for the Estate and Trust \$12+ million from Dallas and Cannon and others, which Defendants began in Case 322 pending in Aiken County.
- (vi) In failing to timely seek dismissal of the Dallas appeal, and in failing to seek the recovery of costs of Case 122 from Dallas and Cannon.
- (vii) In joining or acquiescing in Terry Brown's and David Cannon's attempt to devalue the James Brown assets for the benefit of their joint venturers and diminishing the charitable gift.
- (viii) In failing to accept the Corbis/GreenLight proposal, causing loss and devaluation of the James Brown assets.
- (ix) In unreasonably interfering with a proposed right of first offer, thereby damaging and devaluing the James Brown assets.
- (x) In failing to properly protect the Federal Copyright Act rights of the Estate and Trust.
- (xi) In unreasonably contracting to give Tommie Rae approximately \$20 million where the overwhelming evidence demonstrated there was no basis in fact or law for such a contract.
- (xii) In unreasonably substituting his judgment for that of properly performing fiduciaries, then unreasonably exercising such judgment.

(xiv) In unreasonably agreeing to give Dallas/Cannon joint venturer Terry Brown \$4 million and a right of first refusal, destroying Mr. Brown's estate plan and the value of his assets, causing irreparable harm and exposure to millions of additional dollars of taxes.

(xv) In unreasonably attempting to cover up their negligent acts or omissions by attacking properly serving fiduciaries who are entitled to reasonable compensation and reimbursement for the defense of this action.

(xvi) In unreasonably joining in a private tort suit to damage the "I Feel Good" private foundation and its agents for the personal benefit of private individuals.

(xvii) In unreasonably appointing and controlling Bauknight, including his reckless recommendation that the court approve the AG's actions with no due diligence, resulting in a loss to the Estate and Trust, if not overturned, of at least \$50 million.

(xviii) In unreasonably executing the August 10 contract without consulting with, and excluding, the court-appointed accountant and PR/Trustees, and without adequate knowledge of the Estate Tax impact on the Estate and Trust, or the income tax impact on Brown Entities.

(xix) In unreasonably refusing to participate with the court-appointed accountant and PR/ Trustees in preparing the Estate Tax Return, notwithstanding the PR/Trustees' invitation for the AG to participate.

(xxii) In unreasonably contracting on August 10 to defeat the interests of the beneficiaries and fiduciaries of Mr. Brown's estate plan who did not attend the secret mediation.

(b) AS TO BAUKNIGHT:

(i) In unreasonably recommending and ratifying the above actions of the AG.

(ii) In unreasonably failing to approve the GreenLight 2-year Publicity Rights contract which, but for his failure to approve the contract, could have been in place in May 2009 and would have enhanced the value of the James Brown assets.

(iii) In unreasonably making false and unsupported allegations against Defendants after testifying to the contrary.

(iv) In unreasonably failing to disclose to the Court that he had already undertaken a fiduciary duty to Tommie Rae and Terry Brown, while purporting to make an independent recommendation as to whether the settlement should be approved.

(v) In unreasonably failing to complete the claims litigation.

(vi) In unreasonably failing to ascertain, categorize and pay valid debts and claims of

the 2000 Trust and Estate, including the proper expenses for the defense of the estate plan.

(vii) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of Brown's estate plan.

(viii) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of the tax implications.

(ix) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of likely outcomes regarding allegations related to the issues related to spousal claims, capacity and/or undue influence.

(x) In unreasonably recommending the proposed determination of heirs with insufficient understanding of the federal copyright law implications.

(xi) In unreasonably recommending the proposed settlement which Defendants are informed and believe result in more than \$50 million of damage to the Estate and Trust, taking more than 65% of Brown's assets from Brown's estate plan.

(c) AS TO THE REMAINING PLAINTIFFS:

(i) In unreasonably interfering with the Christie's sale, which Defendants are informed and believe would have provided liquidity for the management and administration of the Estate and Trust, and causing financial detriment to the Estate and Trust and to the value of the James Brown assets.

(ii) In unreasonably, purposely chilling the Christie's sale by their individual acts and those of their duly authorized agents for the purpose of rendering the Estate and Trust unable to compensate Defendants, in an attempt to force Defendants to quit or abdicate their duties under the Will and Trust.

(iii) In unreasonably interfering with the Defendants' proposed GreenLight contract, which Defendants are informed and believe would have enhanced the value of all James Brown assets and would have provided liquidity for management and administration purposes.

(iv) On information and belief, in unreasonably forming alliances with Dallas and Cannon, whom they initially opposed for good reason, so they could all get paid at the expense of Mr. Brown's estate plan and at the expense of the Defendants as properly performing fiduciaries.

74. As a direct and proximate of one or more of Plaintiffs' aforesaid negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton acts or omissions, which Defendants are informed and believe render Plaintiffs 51% or more at fault, Plaintiffs are

agreement which provides, *inter alia*, that they would seek removal of Defendants as fiduciaries and oppose Defendants' request for any commission.

92. Defendants are informed and believe that Bauknight has joined the remaining Plaintiffs in the agreement and is acting in furtherance thereof.

93. As a direct result of Plaintiffs' improper agreement and their many acts and intentional omissions in furtherance of the agreement, Defendants have sustained special damages for which they are entitled to judgment, including, but not limited to (a) the expenditure of Defendants' personal money in fulfilling the duty of protecting, defending and enhancing Mr. Brown's estate plan, (b) the loss of business and income from Defendants' ordinary law practices, both of which are seriously crippled, while dealing with Plaintiffs' attempt to overwhelm Defendants and thereby force a resignation or the abdication of Defendants' responsibility under the Will and Trust; and (c) the further expense and time involved in collecting their claimed commission, which is fair and reasonable and customary for performing the usual and customary duties of fiduciaries in like circumstances, and insufficient for the extraordinary duties performed by Defendants under these circumstances.

94. Defendants are informed and believe they are entitled to recover ^{punitive} damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SIXTEENTH DEFENSE AND THIRD CAUSE OF ACTION
(Intentional Interference with Contract)

95. All allegations made above are incorporated herein where relevant.

96. Pursuant to their authority under the Will/2000 Trust and unappealed Order of the Court dated January 8, 2008, Buchanan and Pope were parties to an approved agreement to be paid as SAs, and for partial payment of their fiduciary commissions as approved by the Court, with interest on unpaid amounts. Plaintiffs were aware of this agreement.

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SC Court of Appeals

97. Plaintiffs have intentionally interfered with Defendants' contract with the Estate/2000 Trust, causing it to be breached and Defendants to be damaged. As a result, Defendants are entitled to compensation for all damages resulting from Plaintiffs' interference with their contract for SA's fees, partial commissions and costs, with interest.

FOR A SEVENTEENTH DEFENSE AND FOURTH CAUSE OF ACTION
(Violation of §62-1-106)

98. All allegations made above are incorporated herein where relevant.

99. The term "heirs" has been used freely, and at times incorrectly, by Plaintiffs, but by March 28, 2008 all Plaintiffs, on information and belief, had knowledge that the heirs of James Brown should be properly determined, even though most were entitled to nothing under Brown's Estate Plan.

100. On information and belief, Plaintiffs had knowledge that an improper determination of heirs would damage the Estate/2000 Trust under the Federal Copyright Act.

101. The Attorney General's answer in Case 2008-CP-02-0872 did not specifically address the "heirs" issues, leaving to Defendants the protection of the Estate/2000 Trust under the Federal Copyright Act.

102. On August 10, 2008, however, without consulting with Defendants, the Attorney General and some of the Plaintiffs stipulated to what is, upon information and belief, an incorrect determination of heirs.

103. Thereafter, in numerous representations and filings with the Court, said Plaintiffs have been presented to the Court as the sole and correct heirs of James Brown, a determination which upon information and belief is false, material, and known by Plaintiffs to be false.

104. On information and belief, said Plaintiffs intended for this known incorrect determination to be relied on and acted on by the Court and the Court and others have relied on

such representations, proximately causing injury to the Estate, 2000 Trust and Defendants.

105. On information and belief such representations circumvented the provisions and/or purposes of the South Carolina Probate Code, including 62-1-102(b)(2), which purpose is to discover and make effective the intent of the decedent in the distribution of his property and (4) to facilitate use and enforcement of certain Trusts and have benefitted from the statements and filings; having been injured thereby, Defendants, on information and belief, are entitled to appropriate relief.

FOR AN EIGHTEENTH DEFENSE AND FIFTH CAUSE OF ACTION
(Attorneys' Fees)

106. All allegations made above are incorporated herein where relevant.

107. On information and belief, Plaintiffs are entitled to recover the costs of this action, including attorneys' fees, under South Carolina Probate Code Section 62-7-1004 and other applicable law.

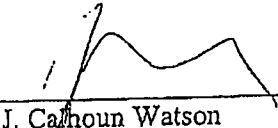
WHEREFORE, Defendants pray that the Court inquire into the matters set forth herein and (a) dismiss the Complaint in its entirety, with prejudice, and with all costs taxed to Plaintiffs; (b) award actual damages to Defendants in such amount as they shall prove to a jury; and (c) award punitive damages to Defendants in such amount as a jury shall find to be fair, reasonable and just.

DEMAND FOR JURY TRIAL

Defendants demand a jury trial as to all legal defenses and causes of action pursuant to Rule 38, SCRCP; and Defendants request the Court, of its own initiative, try any and all equitable issues by the same jury sitting as an advisory jury pursuant to Rule 39(c), SCRCP.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

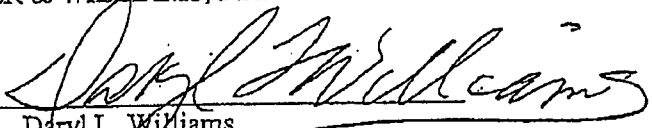
By: _____


J. Cathoun Watson
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Robert L. Buchanan, Jr.

JETER & WILLIAMS, P.A.

By: _____


Daryl L. Williams
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

Attorney for Defendant Adele J. Pope

Columbia, South Carolina
September 30, 2010

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Adele J. Pope,
Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36- 364

COMPLAINT

FILED
NEWBERRY COUNTY
2011 AUG -3 P 5:07
JACKIE S. BOWERS
CLERK OF COURT

Plaintiff would respectfully show unto the Court:

FOR A FIRST CAUSE OF ACTION
(Disclosure of Documents Under FOIA)

Parties and Jurisdiction

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant Alan Wilson is the Attorney General of South Carolina ("AG Wilson"), and is successor in office to Henry D. McMaster ("AG McMaster").
3. Defendant James Brown Legacy Trust ("Legacy Trust") is, on information and belief, a public body under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"), with Russell L. Bauknight as its current trustee. The Legacy Trust is under the continuing and direct control of AG Wilson through the AG's unfettered right at any time and from time to time to remove and replace the trustee of the Legacy Trust with such person as AG Wilson shall select, with all trustees to serve at the AG's pleasure.

4. Contrary to the suggestion in its name, the Legacy Trust was not created by James Brown, and was never part of his estate plan. The Legacy Trust was created in late 2008 or early 2009 by AG McMaster, in his official capacity, and others, to receive funds AG McMaster redirected from Brown's estate plan to the new trust he created. Thus AG Wilson anticipates receiving about \$85 Million (if Plaintiff's valuation is correct) or about \$4.7 Million (if Bauknight is correct) – and any recoveries the State receives from Plaintiff in Case 4900, which the Legacy Trust will then manage and distribute both to a charitable trust created by AG McMaster and to private citizens. See Order of the Honorable Doyet A. Early, III, dtd. 5/26/09, Case 2008-CP-02-1647, on appeal to the S.C. Supreme Court.

5. Defendants are subject to the jurisdiction and venue of this Court pursuant to S.C. Code Ann. §30-4-20(a) and §30-4-100, and may be served with summons, process and copy of this Complaint at their respective addresses listed on Exhibits A and B attached hereto.

Facts and FOIA Request

6. On October 2, 2009 AG McMaster issued an announcement related to the use by his office and the State of private, contingency-fee attorneys known as "special counsel." A copy of that statement, with notes, is attached to this Complaint as Exhibit C.

7. On May 19, 2010 private, contingency-fee counsel Kenneth B. Wingate of Sweeney, Wingate & Barrow, PC (the "Wingate Firm"), as sole counsel for AG McMaster, the Legacy Trust and more than 10 private plaintiffs, filed suit against Plaintiff and Robert L. Buchanan, Jr. in Civil Action No. 2010-CP-40-4900 ("Case

4900").

8. The Case 4900 complaint, naming AG McMaster as a beneficiary, includes the following plaintiffs:

- a. Russell L. Bauknight as trustee of the James Brown Legacy Trust;
- b. Bauknight on behalf of McMaster in his capacity as Attorney General of the State of South Carolina; and
- c. McMaster in his capacity as AG of the State of South Carolina.

9. AG McMaster and Bauknight did not attach or provide a signed copy of the Legacy Trust, although AG and Bauknight as his agent in Case 4900 assert Plaintiff caused tens of millions of dollars of damage to the Legacy Trust.

10. AG McMaster and the Legacy Trust, among other false allegations, assert that Plaintiff's and Buchanan's approximately \$85 Million [\$100 Million less the debt to TIAA-CREF] valuation of James Brown's assets was incorrect and improper. They asserted Plaintiff intentionally overstated Brown's assets on the estate tax return for the improper purpose of obtaining a large commission.

11. As described in Exhibit D, an affidavit of Plaintiff on file in Case 4900, AG McMaster also seeks money damages because Plaintiff declined to sign a document agreeing not to criticize McMaster for destroying James Brown's estate plan by creating the Legacy Trust.

12. If true, AG McMaster's false allegations against Plaintiff could subject Plaintiff to both civil and criminal penalties and destroy her career as an attorney.

13. On or about January 12, 2011 AG Wilson replaced AG McMaster, gaining by virtue of his office control over the Legacy Trust, including the right to remove and

replace the trustee at will.

14. On May 4, 2011, Bauknight filed sworn documents asserting Brown's worldwide music empire was worth less than \$4.7 Million when he died on December 25, 2006, making it virtually impossible for Plaintiff and Buchanan to have done tens of millions of dollars of damage to Brown's empire between November 2007 and May 2009.

15. Bauknight's purported \$4.7 Million valuation sharply conflicts with a securities prospectus issued by Bauknight's Case 4900 Co-Plaintiff (through Pinnacle) to raise \$200 Million to acquire the James Brown worldwide music empire at the same time – about 40 times Bauknight's purported valuation. The prospectus is part of Exhibit D.

16. Since May 4, 2011, AG Wilson, through an assistant AG, and Bauknight offered Bauknight's \$4.7 Million valuation of Brown's worldwide music empire as a supplement to the record in a pending James Brown case appeal. The motion to supplement was denied.

17. On information and belief, the actions of both AGs and AG Wilson's assistant described above were taken under color of State law and in an official capacity, and were or should have been consistent with the public interest and ordinary customs and procedures of the AG's office. Likewise, the actions of Bauknight speaking on behalf of the AGs since May 19, 2010 should have met the same standard.

18. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust. True

copies of her requests are attached hereto as Exhibits A and B. Plaintiff requested copies of:

**The Final and all drafts, signed and unsigned,
of the James Brown Legacy Trust**

19. The request to AG Wilson, in addition, sought:

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

20. A copy of both requests was also delivered to the Wingate Firm which, on information and belief, as counsel for both the AG and the Legacy Trust, has a duty to comply with FOIA. See AG's standard Retention Agreement for Special Counsel.

21. Substantially more than fifteen days, excluding Saturdays, Sundays and holidays have elapsed and Plaintiff has received no response on behalf of AG Wilson.

22. As described in Exhibit D, the Wingate Firm has refused to release the requested documents and thousands of other already-public documents for nearly 10 months. AG McMaster's Retention Agreement for other Special Counsel – Wingate has refused to disclose his Retention Agreement – requires special counsel to comply with FOIA.

23. On July 16, 2011 Plaintiff received from attorney J. David Black, Esquire, a response, a copy of which is attached hereto as Exhibit E, denying the request for a copy of the Legacy Trust and threatening Plaintiff as follows:

In the event that you continue to file unnecessary. . . FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

24. On information and belief, Plaintiff is entitled to review requested documents both in the hands of the AG Wilson and in the hands of the Legacy Trust in accordance with reasonable rules concerning the time and place of access, and no requested record is specifically excluded from disclosure under FOIA.

25. Attorney Black's response is in direct contrast to AG Wilson's position in the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act* in which AG Wilson states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information.

When in doubt, release the document. (p. 1)

26. On information and belief, the actions of the Legacy Trust, through Black, wilfully violate Plaintiff's right to obtain the requested documents and are an arbitrary and wrongful anticipatory interference of a person appointed and controlled by the AG with her right, and the right of other members of the public, to obtain records from both the AG and the Legacy Trust regarding the AG's oversight of the Legacy Trust which must be made available for inspection and copying.

27. Pursuant to FOIA, S.C. Code Ann. §30-4-10 et seq., any person has a right to inspect and copy any public record of a public body.

28. On information and belief, the AG's right of absolute control of the Legacy Trust, along with the support it is provided by the AG's office and the funds the AG's office and Legacy Trust expects to receive and control, including from the State's suit against Plaintiff in Case 4900, make it a public body under §30-4-20. See, for example, Opinions of Henry McMaster, AG, dtd. May 19, 2008 (in response to Merrill/Rutherford)

and December 28, 2006 (in response to McConnell)

29. Plaintiff, a South Carolina citizen faced with threats on behalf of the Legacy Trust and no response of AG Wilson has no adequate remedy at law, and requires an injunction to prevent interference with her rights, and those of other citizens, to these public records.

30. On information and belief, it was willful and reckless for the AG's appointee to assert that attorney-client privilege or work product privilege protects the AG or the Legacy Trust from allowing Plaintiff to inspect and copy the requested documents which create the vehicle used by AG McMaster and Bauknight to pursue collection of tens of millions of dollars from Plaintiff and which documents have been used as an authorization for Bauknight to act on behalf of the State.

31. Based upon the facts set forth above, this Court should enter an order declaring that the requested records are public records and should be made available to the public and Defendant by both AG Wilson and the Legacy Trust, as well as by all special counsel, for inspection and copying as provided for by FOIA.

**FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment that Legacy Trust is a Public Body under FOIA)**

32. The allegations of paragraphs 1 through 31 are incorporated by reference as if fully and specifically set forth herein.

33. In addition, based on the facts set forth above, and other factors set out in the Opinion of AG McMaster dtd. May 19, 2006, including but not limited to its creation and control by the AG and its being supported in whole or in part by public funds, on

information and belief, the Court should declare the Legacy Trust a Public Body as defined in S.C. Code Ann. § 30-4-20(a), with all obligations under FOIA as set out therein.

**FOR A THIRD CAUSE OF ACTION
(Attorneys' Fees Under S.C. Code Ann. § 30-4-100(b))**

34. The allegations of paragraphs 1 through 33 are incorporated by reference as if fully and specifically set forth herein.

35. Plaintiff is informed and believes that if she prevails in this case, in whole or in part, she should be entitled to reasonable legal fees and costs of litigation pursuant to S. C. Code Ann. § 30-4-100(b).

36. On information and belief, the Court should enter an order awarding Plaintiff her legal fees and other litigation expenses incurred in this case pursuant to S. C. Code Ann. § 30-4-100(b).

37. Based upon the facts set out above, this Court should consider punitive measures to stop the threats of the AG's appointee, which are intended to chill and impair the public's right to public information.

WHEREFORE, Plaintiff respectfully prays to this Court for the following:

- a. That this Court issue an order declaring that the above-described documents are public records under South Carolina law and that such records should be made available for inspection and copying to the Plaintiff by both Defendants as provided by law;
- b. That, in addition, this Court should declare that The James Brown Legacy Trust is a public body subject to all of the obligations of a public body under FOIA;
- c. That this Court should compel Defendant AG Wilson to perform his official duty and the Legacy Trust to comply with FOIA by permitting Plaintiff to inspect and copy the above-described public records as provided by law,

and enjoining them from interfering with such inspection and copying;

- d. That this Court order Defendants to pay the Plaintiff her reasonable attorney's fees and other litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. § 30-4-100.
- e. That the AG should direct the Wingate Firm and all special counsel to comply with their FOIA duties with respect to the Legacy Trust.
- f. That this Court set at the earliest possible time a hearing on the matters set forth herein.
- g. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

August 3, 2011

Attorney for Plaintiff

FILED
NEWBERRY COUNTY
2011 AUG -3 P 5:07
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - A

1228 Walnut Street
Newberry, South Carolina 29108

FILED
NEWBERRY COUNTY
2011 AUG -3 P 5: 08
JACKIE S. BOWERS
CLERK OF COURT

June 30, 2011

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Request for Documents under the South Carolina Freedom of
Information Act

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act.

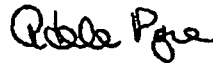
I would like to receive copies of the following documents:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust
2. All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,



Adele J. Pope

FILED
NEWBERRY COUNTY

2011 AUG - 3 P 5: 08

JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; and Others,
Plaintiffs.

and
HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State
of South Carolina and others

v.
Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

) IN THE CIRCUIT COURT

) Case No.: 2010-CP-40-490

) Affidavit of Adele J. Pope
) Supporting Production of Legacy Trust,
) Fee Contract with State/AG
) and Related Documents prior
) Hearing on Motion for
) Injunctions

JACKIE S. BOWERS
CLERK OF COURT

2011 AUG -3 P 5:08

NEWBERRY COUNTY
FILED

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 AUG -2 PM 1:03

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly
sworn deposes and says:

1. On May 19, 2010 Kenneth B. Wingate and his firm (collectively "Wingate")
filed this suit against Robert L. Buchanan, Jr. ("Bob") and me seeking tens of millions of
dollars in tort damages for then-Attorney General Henry D. McMaster ("AG McMaster"
or the "State") and about 15 private individuals ("Private Plaintiffs").

2. I ask the Court to require Wingate and Plaintiffs, before the hearing on my
motion to enjoin them from acting for the AG/State, to produce signed copies of the
originals and any amendments to the following documents:

- a. Wingate's Retention Agreement(s) with the AG/Plaintiffs;

¹ The Firm name is Sweeney, Wingate and Barrow, P.C.

- b. The James Brown Legacy Trust ("Legacy Trust")²;
- c. The AG's authorization for Bauknight to assert he speaks on behalf of the AG.

3. Serving simultaneously as sole counsel for Private Plaintiffs³ and the AG, Wingate named in the caption of the Complaint as parties:

- a. RUSSELL L. BAUKNIGHT... on behalf of [AG McMaster];
- b. BAUKNIGHT.. as Trustee of the James Brown Legacy Trust; and
- c. AG McMaster.

4. For 9 months Wingate and Bauknight have refused to produce the requested documents either through discovery or, more recently, under the S. C. Freedom of Information Act ("FOIA")

5. I first learned of Wingate's involvement in April 2010 when Plaintiff Tommie Rae Brown's agent advised that if Bob and I did not drop a pending James Brown appeal AG Sonny Jones⁴ would to sue us through contingency-fee counsel Wingate.⁵

² The Legacy Trust, although bearing Brown's name, was not created by James Brown or part of his estate plan. It was created by AG McMaster and Bauknight in either late 2008 or 2009.

³ Private Plaintiffs include:

- a. 5 of the 7 grandchildren/beneficiaries of a \$285,000 education fund
- b. 6 adults Brown gave personal effects under the Will but specifically excluded from his \$85 Million worldwide music empire;and
- c. 3 other persons Brown specifically excluded from both the Will and 2000 Trust.

⁴ While we were PR/Trustees C Havird ("Sonny") Jones, acting for AG McMaster, tried to force Bob and me to use AG McMaster's Litigation Retention Agreement in hiring attorneys AG McMaster selected. By Order dated Jan.8, 2008, the Court declined his request.[See Tr., Hg. 12/21/07, Case 122]

⁵ The appeal is in Case 2008-CP-02-1647 ("Case 1647"). In that appeal, Bob and I oppose a settlement which will take \$50 Million from Brown's 2000 Trust, dedicated to educate 7 grandchildren and needy and deserving students, and give it to 6 of Brown's more than a dozen claimed heirs, all of whom Brown disinherited from his worldwide music empire.

unfortunate shooting death and ongoing murder investigation (adult charged) which took place at his 16th birthday party this year.

- g. Plaintiff Terry was part of a scheme to sell the James Brown assets for \$100 Million; create an IPO; and pay options or a "kickback" to former PR/Trustees Cannon and Dallas.
- h. Wingate's Witness List names as a witness for AG McMaster Cannon, indicted in 2010 for felonies against Brown for every year from 1999 - 2006 and a 2008 forgery, now awaiting trial.
- i. Wingate's Witness List names as a witness for AG McMaster Albert Dallas, found by the Court to have committed fraud under Probate Code §62-1-106 in James Brown cases, and who is being sued by the Estate/2000 Trust for secretly misappropriating more than \$12 Million from James Brown.
- j. Wingate – 14 months after filing suit has apparently failed to pay disclosed experts Hobbs and Provence. See AG's standard Retention Agreement.
- k. Wingate - lacking experience in the James Brown cases – has made misrepresentations to this Court, including about the status of other cases in a proposed order which the Court in this case signed.¹²

15. I am informed and believe that, like other Retention Agreements, the Wingate Agreement is a public record.

16. In my more than 30 years as an attorney for litigants in trust and estate matters, I have never known an AG to be a co-Plaintiff using joint private counsel in a tort suit for money damages against a South Carolina citizen.

17. Although I have been involved in a number of matters in which the AG was involved, I do not recall any time when – as here – the AG is party to a case but the AG (or an associate) is not counsel of record for the AG only.

¹² See Order Denying Motion to Dismiss, proposed by Wingate, in which the Court found that four Aiken County cases were no longer pending when all were active.

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18. I do not recall in 30 years seeing any private citizen – as Bauknight does here – assert in a case that he acts “on behalf of the Attorney General of the State of South Carolina.”

19. I am informed and believe that AG McMaster's contingency-fee Litigation Agreement with Wingate as Special Counsel should contain significant provisions, as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob and me from the use of the State's power to support abusive acts of private counsel and Private Plaintiffs. [See AstraZeneca agreement AG McMaster signed on October 20, 2006 (“AZ”), which did not involve Private Co-Plaintiffs.]

20. Portions of the AZ agreement, with emphasis supplied, are:

RECITALS

WHEREAS, the Attorney General has concluded it is in the best interest of the State ...to retain Special Counsel specifically for this litigation matter

...
WHEREAS, Special counsel specifically represents that he has the skill, experience and competence necessary for the meaningful prosecution of this matter.

Article II. SERVICES

...
2. ... Special counsel shall provide legal services to the Attorney General... for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation. ..

3. ... All pleadings, motions, briefs, formal documents and agreements must bear the signature of the Attorney General or his designated assistant.

Article III. CASE MANAGEMENT

...F. **Public Records**
Any material, date, files, discs, or documents created, produced or

pitted against the AG's office with its \$7 Million annual budget – stated:

AstraZeneca seeks to ensure that itself, or any other major corporation engaging in widespread unfair and deceptive conduct, maintains such a massive advantage in resources that this [AG Wilson's] Attorney General's Office – and others around the country – are simply without resources to effectively enforce their state statutes.

27. I attended a hearing in July 2011 on the AG's motion to dismiss AZ's case challenging private counsel and heard AG Jones speak of the unfairness of giant entities such as AZ attempting to intimidate relatively small ones like the AG's office.

28. In this case against Bob and me, AG McMaster's office is the giant.

29. I am informed and believe that if the Court requires the Wingate Retention Agreement(s) and other requested documents to be delivered before the injunction hearing, it will help the parties and Court address the following essential questions related to the injunction request:

- 1. Is Bauknight's assertion that he speaks on behalf of AG McMaster legal?**
- 2. Did all Private Plaintiffs sign the Retention Agreement (as is required for a contingent fee), and did they cede control to the AG so that the State would not trample on our Constitutional rights as citizens?**
- 2. Is any public policy articulated for the State/AG joining Private Plaintiffs in this tort suit for money damages against us?**
- 3. Is any Public Policy violated or served by AG McMaster's sharing a single private law firm and attorney-client privilege with Private Plaintiffs?**
- 4. Did AG McMaster violate his own policy and/or the Retention Agreement by not maintaining control over the litigation and signing the complaint?**
- 5. What does the Retention Agreement provide if Private Plaintiffs/Bauknight become targets of securities, tax or fraud investigations and their witnesses are under indictment or investigation in South Carolina?**
- 6. How are the funds recovered from Bob and me, if any, shared?**

7. How is our judgment against Plaintiffs, if any, to be paid?
8. May Wingate properly assert the State's privileges and immunities to attempt to relieve Private Plaintiffs from default?
9. Did AG McMaster approve seeking money damages against us for not signing an agreement not to criticize AG McMaster ?
10. Does the Retention Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?
11. What action, if any, has AG Wilson taken to amend the Retention Agreement or Bauknight authorization to act on behalf of the AG?

FURTHER DEPONENT SAYETH NOT.



Adele J. Pope

SWORN TO BEFORE ME this
1st day of August, 2011


 (L.S.)
Notary Public for South Carolina
My commission expires: 7/13/2016

EXHIBIT C

NEXSEN|PRUET

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 5: 08
JACKIE S. BOWERS
CLERK OF COURT
J. David Black
Member
Admitted in SC

July 15, 2011

VIA US MAIL

Adele J. Pope, Esquire
1228 Walnut Street
Newberry, South Carolina 29108

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Ms. Pope,

I am writing you in reference to your June 30, 2011 South Carolina Freedom of Information Act (FOIA) request for "The final and all drafts, signed and unsigned, of the James Brown Legacy Trust" (James Brown Trust).

- Charleston
- Charlotte
- Columbia
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

As you are aware, for FOIA purposes, the James Brown Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 33-40-20(a). Accordingly, your request for public records is improper.

Furthermore, even in the event that such request were proper, the documents that you have requested are exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(7) as the FOIA request calls for the production of Attorney Work Product and Attorney Client Privileged Materials related to ongoing litigation.

Please be advised that FOIA is not intended as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers*, 2002-CP32-1890 (Order of Judge Westbrook, 11th Jud. Cir., 2002) (citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975); *U.S. v. Murdock*, 548 F.2d 599, 602 (5th Cir. 1977); *Fruehauf Corp. v. Thornton*, 507 F.2d 1253, 1255 (6th Cir. 1974)).

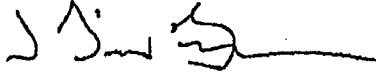
In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

1230 Main Street
Suite 700 (20201)
PO Drawer 2428
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2072
F 803.727.1409
E DBlack@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Adele J. Pope, Esquire
July 15, 2011
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. David Black', with a long horizontal flourish extending to the right.

J. David Black

JDB/JGH

cc: James B. Richardson, Jr., Esquire
Russell L. Bauknight

| | | |
|-------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE EIGHTH JUDICIAL CIRCUIT |
| COUNTY OF NEWBERRY |) | |
| Adele J. Pope, |) | C/A No. 11-CP-36-364 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | MOTION TO DISMISS UNDER RULE 12(b) |
| |) | BY DEFENDANT JAMES BROWN LEGACY |
| Alan Wilson, in his capacity as |) | TRUST, BY RUSSELL L. BAUKNIGHT, ITS |
| Attorney General of South Carolina, |) | TRUSTEE |
| and James Brown Legacy Trust, by |) | |
| Russell L. Bauknight, its Trustee, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

TO: ADAM T. SILVERNAIL, ESQ., ATTORNEY FOR PLAINTIFF:

The Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, by and through its undersigned attorney, gives notice and does hereby move under Rule 12 of the S. C. Rules of Civil Procedure for dismissal of the above-captioned action.

The grounds for such motion are as follows:

1. Dismissal under Rule 12(b)(3) should be granted, as venue is improper in that, in related litigation the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al., v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010. Venue should be in Richland County.
2. Dismissal is also requested under Rule 12(b)(6).
3. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8).

Subject to the Motion to Dismiss, this Defendant moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and/or that are irrelevant.

IT IS SO MOVED.

A. Camden Lewis
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, South Carolina 29211

By: 

A. Camden Lewis

Attorneys for Defendant James Brown Legacy
Trust, by Russell L. Bauknight, its Trustee

Columbia, South Carolina

September ____, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

C.A. No
11-CP-36-379

-v-

ORDER

ALAN WILSON, *in his*
capacity as Attorney
General,
defendant.

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County¹. See *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

¹ The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

¹ 

Exhibit C-1

Honorable Casey L. Manning.² At the time of the stay, the parties to the fiduciary litigation (hereinafter "McMaster parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

² At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]

The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

² *MA*

II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938)), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRPC. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*³ and *Richardson, Plowden, Grier & Howser v. Pyle*.⁴ These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

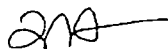
The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,⁵ the

³ 264 S.C. 172, 213 S.E.2d 588 (1975).

⁴ 322 S.C. 371, 472 S.E.2d 232 (1996).

⁵ This Rule states, in pertinent part, that

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; or (2) disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.



Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

[t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker and Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. See *McDonald*, 276 S.C. at 575 (“Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction.”). This judicial principle a great resemblance to the Rule 12(b)(8) standard announced by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that “[i]n South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim.” *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant's *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of *mandamus* cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

[h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. See *Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

5 

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to “any person.” S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRC (“Parties may obtain discovery by one or more of the following methods. . .”). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only be appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.⁶

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.⁷ Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules “shall be construed to secure the just, speedy, and inexpensive determination of every action.” Rule 1, SCRC. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRC (“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action.”); *Creighton v. Coligny Plaza Limited*

⁶ Given this analysis, Defendant’s motion to dismiss pursuant to Rule 12(b)(8) is also denied.

⁷ In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

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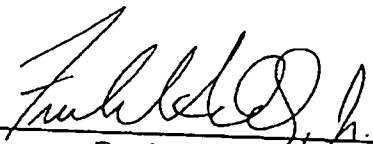
Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.").

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim-to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

William Forlando Brown f/k/a Forlando
Brown,

Plaintiff,

vs.

Adele J. Pope, et al,

Defendants.

Civil Action No. 3:08-cv-00014-WOB

**REPLY IN SUPPORT OF THE SPECIAL
TRUSTEE OF THE JAMES BROWN AUGUST 1,
2000 TRUST'S MOTION CONFIRMING
CONFIDENTIALITY DESIGNATION**

On September 11, 2013, the then Special Trustee (now Trustee¹), moved this Court to confirm the confidentiality of two documents, [Doc. 290], designated confidential pursuant to the Court's August 6, 2008 Protective and Confidentiality Order. [Doc. 83]. On September 27, 2013, Counterclaimant Pope filed a response in opposition to the Trustee's motion. [Doc. 299]. On September 30, 2013, Counterclaimant Buchanan filed a response in opposition to the Trustee's motion. [Doc. 300]. In the response, Counterclaimant Buchanan referred to, and consented to, the response filed by Counterclaimant Pope on September 27, 2013. On October 7, 2013 the Trustee filed a reply in opposition to the response of the Counterclaimants. [Doc. 302]. The Trustee's reply was intended to reply to both the response of Counterclaimant Pope, [Doc. 299], and Counterclaimant Buchanan. [Doc. 300]. Because each counterclaimant filed a response on different days, however, the ECF System provided different days to reply to each response. The reply to the response of Counterclaimant Buchanan is due on October 10, 2013. In order to ensure that the record of this case is clear, the Trustee hereby incorporates by

¹ On October 1, 2013, the Honorable Doyet A. Early III issued an order appointing Russell L. Bauknight as the general Trustee and Personal Representative following the remand from the Supreme Court's opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

Exhibit D-1

reference his reply filed on October 7, 2013, [Doc. 302], and submits the same in reply to the response filed by Counterclaimant Buchanan on September 30, 2013. By incorporating its October 7, 2013, response herein, the Trustee hereby, and respectfully submits, this reply in opposition to the response of Counterclaimant Buchanan.

Respectfully submitted,

s/ J. David Black

J. David Black, Fed Id No. 7746
Fred L. Kingsmore, Jr., Fed Id No. 2351
Burl F. Williams, Fed-Id No. 10556
NEXSEN PRUET, LLC
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
FKingsmore@nexsenpruet.com
DBlack@nexsenpruet.com
BWilliams@nexsenpruet.com
Russell L. Bauknight, Trustee of the
James Brown August 1, 2000
Irrevocable Trust Agreement

October 10, 2013

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

William Forlando Brown f/k/a Forlando
Brown,

Plaintiff,

vs.

Adele J. Pope, et al,

Defendants.

Civil Action No. 3:08-cv-00014-WOB

**RUSSELL L. BAUKNIGHT'S (SPECIAL
TRUSTEE OF THE JAMES BROWN 2000
IRREVOCABLE TRUST AGREEMENT)
MOTION CONFIRMING CONFIDENTIALITY
DESIGNATION**

Pursuant to this Court's August 6, 2008 Protective and Confidentiality Order [Dkt. 83] Mr. Bauknight, Special Trustee of the James Brown 2000 Irrevocable Trust Agreement (Bauknight), subject to his prior objections¹ and via limited appearance, hereby confirms the confidentiality designations that were affixed to documents produced on August 20, 2013 in response to Defendant Adele J. Pope's non-party deposition subpoena. Pursuant to the Protective and Confidentiality Order, the documents were reviewed by counsel, marked confidential, and the certification was made concurrently with the disclosure of the documents.

In compliance with the non-party subpoena and this Court's July 18, 2013 Order [Dkt. 269], Mr. Bauknight produced two categories of documents prior to his deposition: (1) the Professional James Brown Estate Valuation prepared by Phillpott, Ball, and Werner; and (2) the

¹ To the extent a separate cause of action ever existed against the Trust, Plaintiff Forlando Brown has dropped his lawsuit against the Trust, and the Trust has withdrawn its counterclaims against Mr. Brown. No claim is pending against the James Brown Trust. To the extent Ms. Pope is attempting to seek assets of the Estate and Trust through this case, such actions are improper and her previous assertions that the probate exception to federal diversity jurisdiction applies [Dkt. 15, Dkt. 86, p. 23] would make that effort futile. *Marshall v. Marshall*, 547 U.S. 293 (2006).

discovery is had. 4 JAMES W. MOORE, ET AL., MOORE'S FEDERAL PRACTICE ¶ 26.75 (2nd ed. 1993). The allegations of a particularized harm are usually in the form of a motion or affidavit, either for a protective order, a return to a motion to compel production, or a response to a challenge of confidential designation. Once the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm, the party seeking the discovery must then come forward and show that the information sought "is both relevant and necessary to the case. When both parties meet their burden of proof, the court must weigh the opposing factors." *Id.* at 26-402.

ANALYSIS

I. Phillpott, Ball, and Werner's Date of Death Valuation of the James Brown Estate

The Professional Valuation Report is a confidential financial compilation of the entire James Brown Estate³ as it existed on James Brown's date of death. The Professional Valuation Report is protected from unauthorized disclosure pursuant to several state court confidentiality orders covering Estate records. Ironically, it was Ms. Pope that first requested that the Estate's business records be protected pursuant to confidentiality orders (*See Exhibit 1*, one of the many Estate Confidentiality Agreements signed and notarized by Ms. Pope, as well as her November 14, 2008 Motion designating ALL Estate records confidential). Ms. Pope should be estopped from now taking a contrary position in this litigation.

The Valuation Report should remain confidential as it contains:

³ Phillpott, Ball, and Werner's valuation report incorporates analysis and findings from their review of more than one-hundred estate files, including materials and documents that are subject to separate confidentiality orders. Of particular importance, Ms. Pope has argued in this action that those documents contain "*attorney client, work product privileged documents, as well as commercially sensitive trade secret documents.*" [Dkt. 67, Dkt 69 at p. 2]. Allowing Ms. Pope to now take a contrary position places those documents at risk as several commercially sensitive trade secret documents are incorporated into the Professional Valuation Report.

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SC Court of Appeals

Professional Valuation Report could hamper the Estate's ability to close the biopic deal. The Estate is also negotiating several other royalty agreements that could be placed in jeopardy in the event the Professional Valuation Report is disclosed. *Id.* at ¶¶ 15-17.

Disclosure of the Professional Valuation Report could also unnecessarily harm the Estate in future business transactions by placing the Estate at an extreme disadvantage in negotiating royalties; disclosing proprietary information that will make it difficult to negotiate ongoing contracts (*i.e.* after disclosure competitors will want the same deal); and competitors will be aware of the strategic aspects of the Estate's sensitive business structure and business plan and could use that information against the Estate. *Id.* at ¶¶ 17-18.

Counsel for Ms. Pope ignores Ms. Pope's prior confidentiality designations in this and other lawsuits and instead contends that the Professional Valuation Report is part of the public record due to the South Carolina Attorney General filing a motion to amend the record before the South Carolina Supreme Court. Additionally, Ms. Pope contends the content of the valuation was discussed in other Attorney General filings. However, such contention simply does not hold water. As Mr. Bauknight explained in his deposition, the Attorney General has never possessed a copy of the Professional Valuation Report, the extensive contents of the document has not been disclosed and it has remained confidential at all times. While it is common knowledge that the Internal Revenue Service and Phillipott, Ball, and Werner separately placed a less than \$5 million dollar value on the Estate at date of death, the extensive contents, compilations, and all other aspects of the Professional Valuation Report have been kept confidential. The Estate has not waived any privilege relating to the Professional Valuation. *Id.* at ¶¶ 17-20 (emphasis added). Accordingly, the document was properly designated as confidential and as set forth above; the

Estate would be harmed in its business dealings and negotiating positions if the details of its present and future business deals became a matter of public record.

II. Sweeney Wingate and Barrow's Engagement Letter with the Estate

As the South Carolina Supreme Court's May 8, 2013 decision references, the Estate is also involved in litigation with Ms. Pope concerning the damage she caused to the Estate during her relatively short tenure. In May of 2010, the Estate and Trust instituted civil litigation against Ms. Pope in the Richland County Court of Common Pleas; the litigation seeks to recover damages inflicted upon the Estate and Trust as a result of Ms. Pope's breaches of her fiduciary duties during her time as the PR/Trustee of the James Brown Estate and Trust (case 2010-CP-40-4900). The Estate and Trust has retained the law firm of Sweeney Wingate and Barrow, PA, to pursue the litigation against Ms. Pope in the Richland County Court of Common Pleas state court action. Ms. Pope has sought Sweeney Wingate and Barrow's Engagement Letter with the Estate and Trust in that litigation. Ms. Pope also requested the Engagement Letter through several FOIA actions.

On August 9, 2011, the Estate and Trust objected to Ms. Pope's request by filing a protective order with the circuit court (*see Exhibit 3, Sweeney Wingate Motion for Protective Order*). That motion is currently under advisement. It is clear Ms. Pope is looking for unrelated fee-splitting retention agreements between counsel for the parties to the now vacated settlement agreement. The private fee agreement is protected from production by the attorney-client privilege and as such, should remain confidential until such time that the circuit court addresses Sweeney Wingate's motion for protective order. *Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999). Allowing disclosure of the Estate and Trust's Engagement Letter with private

counsel in an unrelated action could damage the Estate and Trust by mooted its privilege objections in the unrelated circuit court actions. *See Exhibit 1*, at ¶¶ 19-33.

CONCLUSION

The James Brown Estate and Trust has met its burden of showing good cause by alleging particularized harm through Mr. Bauknight's September 10, 2013 Affidavit (Exhibit 2). Accordingly, the Estate and Trust requests that the Professional Valuation and Engagement Letter with private counsel in the unrelated action be afforded proper protection pursuant to this Court's August 6, 2008 Protective and Confidentiality Order. In the alternative, due to the potential irreparable injury that such public disclosure could cause the Estate and Trust, pursuant to FRCP, Rule 65, the Estate and Trust also moves for injunctive relief prohibiting Ms. Pope, or any other party, from disclosing or otherwise publicly disseminating the Estate and Trust's Professional Valuation and Engagement letter with private counsel outside of this litigation.

Respectfully submitted,

s/ J. David Black

J. David Black, Fed Id No. 7746

Fred L. Kingsmore, Jr., Fed Id No. 2351

Burl F. Williams, Fed Id No. 10556

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Russell L. Bauknight, Special Trustee of the
James Brown 2000 Irrevocable Trust Agreement

September 11, 2013

Columbia, South Carolina

counsel in an unrelated action could damage the Estate and Trust by mootng its privilege objections in the unrelated circuit court actions. See **Exhibit 1**, at ¶¶ 19-33.

CONCLUSION

The James Brown Estate and Trust has met its burden of showing good cause by alleging particularized harm through Mr. Bauknight's September 10, 2013 Affidavit (Exhibit 2). Accordingly, the Estate and Trust requests that the Professional Valuation and Engagement Letter with private counsel in the unrelated action be afforded proper protection pursuant to this Court's August 6, 2008 Protective and Confidentiality Order. In the alternative, due to the potential irreparable injury that such public disclosure could cause the Estate and Trust, pursuant to FRCP, Rule 65, the Estate and Trust also moves for injunctive relief prohibiting Ms. Pope, or any other party, from disclosing or otherwise publicly disseminating the Estate and Trust's Professional Valuation and Engagement letter with private counsel outside of this litigation.

Respectfully submitted,

s/ J. David Black

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Russell L. Bauknight, Special Trustee of the
James Brown 2000 Irrevocable Trust Agreement

September 11, 2013

Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | | |
|---|---|-------------------------------------|
| Forlando J. Brown, |) | Civil Action No.: 3:08-cv-00014-WOB |
| |) | |
| |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| |) | |
| Adele J. Pope, individually and As Trustee of |) | |
| the Irrevocable Trust established by James |) | |
| Brown in August 1, 2000, and |) | |
| |) | |
| |) | |
| Robert L. Buchanan, Jr., individually and As |) | |
| Trustee of the Irrevocable Trust established |) | |
| by James Brown in August 1, 2000, |) | |
| |) | |
| Defendants. |) | |
| |) | |

AMENDED COUNTERCLAIMS OF ROBERT L. BUCHANAN, JR., INDIVIDUALLY

Defendant Robert L. Buchanan, Jr., pursuant to the Order of the Honorable William O. Bertelsman dated April 19, 2012 dismissing the complaint of Plaintiff herein and granting defendant Buchanan leave to amend his counterclaims against Forlando J. Brown, would respectfully allege as follows:

INTRODUCTION

1. Plaintiff Forlando J. Brown is a grandson of entertainment icon James Brown and the son of Terry Brown.
2. The Irrevocable Trust which is the subject of this action was established in Aiken County, South Carolina by James Brown on August 1, 2000, to pay for the education of certain of his grandchildren under 35 years of age and to pay for the education of underprivileged and deserving students who attend educational institutions in Georgia and South Carolina. Its situs is now Richland County, South Carolina.

3. Defendant/Counterclaimant Adele J. Pope and Robert L. Buchanan, Jr. (“Buchanan”) served as Trustees of the Irrevocable Trust from November 20, 2007 until May 26, 2009, when they were replaced as James Brown’s fiduciaries, without showing or existence of cause, as part of a settlement which destroyed the noble Estate Plan of James Brown to leave his entire music empire to what should have been South Carolina’s largest-ever private foundation dedicated solely to the education of needy students.

4. For more than five years, while purporting to be an impoverished student desiring only to ensure the wishes and intent of his grandfather as set out in the Irrevocable Trust, Plaintiff, acting with Terry Brown and others, has intentionally used and defrauded this Honorable Court and the State Courts to damage Adele J. Pope and Buchanan and to obtain the assets of the Irrevocable Trust for himself, Terry Brown and their joint venturers. All of these facts, and those set forth in greater detail below, mandate that Plaintiff Forlando Brown be liable to Buchanan for actual and punitive damages and that the Irrevocable Trust pay all of Buchanan’s fees and costs in this action, including reasonable attorneys’ fees, to be equitably charged against the share of the Irrevocable Trust created for Plaintiff, in accordance with the terms of the Irrevocable Trust and the S.C. Trust Code.

JURISDICTION AND VENUE

5. This Counterclaim alleges acts by the Plaintiff that are within and under the jurisdiction of the Court and which took place within the District of South Carolina.

6. Jurisdiction is appropriate under 28 U.S.C. § 1332 (diversity) in that this action constitutes a dispute between “citizens of different states.”

7. Venue is appropriate under 28 U.S.C. § 1391(b) (1) (as a judicial district where any defendant resides) and 28 U.S.C. § 1391(b) (2) (as a judicial district in which a substantial

part of the events giving rise to the claim occurred).

8. The amount in controversy is in excess of \$75,000 in that the value of the Irrevocable Trust is believed to be in excess of tens of millions of dollars or more, the damage Plaintiff has caused to Buchanan is in excess of \$75,000 and the damage caused by Plaintiff to the Estate and Irrevocable Trust exceeds his interest therein.

THE PARTIES

9. Plaintiff, Forlando J. Brown, is a resident of Georgia, is a citizen of Georgia, and as a result of the death of James Brown and in accordance with its terms, became entitled to the creation of a \$285,000 share of the Irrevocable Trust.

10. Buchanan is a resident and citizen of Aiken County, South Carolina, who served as a Trustee of the Irrevocable Trust from November 20, 2007 until May 26, 2009.

The Terms of the Irrevocable Trust

11. James Brown recognized the value of education, and wished that he had been able to obtain more of an education during his life. James Brown constantly advocated the value of education throughout his lifetime. The Irrevocable Trust reflects James Brown's wish to provide those in need with an opportunity to receive an education.

12. The Irrevocable Trust is the sole residuary devisee of the Will. Upon the death of James Brown the Trust provides for division of the Irrevocable Trust into two sub-trusts:

- a. a private education trust with a fund of \$285,000 for each of Forlando and six (6) other designated grandchildren; and
- b. The James Brown "I Feel Good" Trust - a tax-exempt charitable private foundation for the benefit of underprivileged students studying in the States of South Carolina and Georgia.

13. James Brown's assets and those of the Irrevocable Trust are valued by his Trustees on the Estate's Inventory at \$100 Million (less a debt to TIAA), based on their knowledge of

Brown's music empire and the music industry, and an offer made to the Trustees in October 2007.

14. The trust James Brown placed in his original Trustees Cannon, Dallas and Bradley when he named them Trustees of the Irrevocable Trust was misplaced.

15. Between 1999 and 2007 Cannon secretly took more than \$12 Million of Brown's assets and those of the Irrevocable Trust, while Dallas and Bradley failed to properly manage the Irrevocable Trust and prevent, stop or expose Cannon's takings.

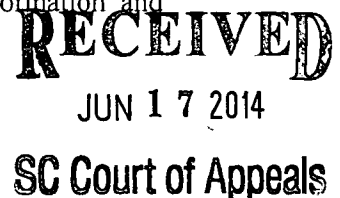
16. On the same day that James Brown executed the Irrevocable Trust Agreement, August 1, 2000, James Brown as Director and CEO of James Brown Enterprises, Inc. ("JBE, Inc."), his wholly-owned corporation, along with the other directors of JBE, Inc., signed a corporate resolution, authorizing James Brown individually and as CEO to transfer his shares and ownership interest in JBE, Inc. to the Irrevocable Trust.

17. The Trustees received JBE, Inc. as an asset of the Irrevocable Trust, but in 2007, believing they could avoid removal as Trustees by complying with the request of Brown's companion Tommie Rae Hynie, falsely asserted that JBE, Inc. was never part of the Irrevocable Trust.

18. Plaintiff, with knowledge as defined the S.C. Trust Code that the stipulation was false, supported it, on information and belief, to support his joint venturers.

The Competing Plans of Family and the Cannon Group to Strip Away and Take Assets of the Estate and Irrevocable Trust for Themselves.

19. As Brown's health declined in the fall of 2006, the Cannon group Trustees formed a plan to abandon the mission of the Irrevocable Trust by selling the assets; paying themselves exorbitant commissions for the sale; and, in addition, collecting options or a "kickback" from the purchasers. Cannon planned to retire to Roatan Island, Honduras, where, on information and belief, he had already invested funds he took from James Brown.



20. After James Brown met with family members about a month before his death to re-confirm his intention to disinherit them in favor of the "I Feel Good" foundation, Forlando, his father Terry and other family members initiated separate plans to undo Brown's noble Estate Plan.

21. From Brown's death on Christmas Day 2006 until early January 2007, Forlando and the family members aligned themselves with the Cannon group. James Brown's daughters Deanna and Yamma took positions with the Irrevocable Trust, and the family shared access to Brown's 60-acre home estate, owned by the Irrevocable Trust, with the Cannon group Trustees.

22. During this period Trustees Cannon and Dallas fabricated a false second Schedule B to the Irrevocable Trust which made it appear all of Brown's assets were in the Irrevocable Trust, and that the Estate had no assets. On information and belief, this fabricated document was intended to avoid any Court scrutiny of their actions.

23. By January 3, 2007 the alliance of the family and the Cannon Trustees had dissolved. Each now accused the other group of taking hidden assets belonging to Brown and the Irrevocable Trust, about \$17 Million of which has never been accounted for.

24. In January 2007 Forlando and family members created and disseminated a fake securities prospectus which sought to raise \$200 Million to acquire the James Brown assets. Cannon purchased the lot for his million-dollar retirement home.

25. On January 24, 2007 Forlando and other family member filed an action in Aiken County, which became Case No. 2007-CP-02-0122 ("Case 122") to remove the Cannon Group Trustees. Children Deanna, Daryl and Yamma filed affidavits expressing fear the Cannon group Trustees would escape with the hidden assets.

26. In February 2007 Cannon and Dallas hired the Atlanta law firm of Powell Goldstein, LLP, later Bryan Cave, LLP ("PG") to advise about "all Schedules B" to the

Irrevocable Trust.

27. On March 7, 2007, at the recommendation of Forlando, family members and Brown's companion, Circuit Court Judge Doyet A. Early, III appointed Pope and Buchanan as non-fiduciary Special Administrators ("SA s") to oversee the actions of the Trustees.

28. By June 15, 2007 Forlando had fired his attorney in Case 122; engaged the firm of David B. Bell, Esq.; and aligned himself with the Cannon group Trustees in a plan to sell the James Brown assets for \$100 Million; form an IPO; and pay the Trustees \$15+ Million in commissions, with options or a "kickback" from the IPO to be created.

29. On July 10, 2007, a PG attorney sent Dallas documents to transfer the situs of the Irrevocable Trust from South Carolina to Georgia. The documents did not contain notices necessary to comply with the requirements of the South Carolina Trust Code as it relates to changing the situs of a Trust.

30. On July 17, 2007 Buchanan and Pope traveled to Barnwell; reviewed the Irrevocable Trust's checkbook for the first time; and found that Cannon had taken \$900,000.00 in 2006.

31. On July 26 or 28, 2007, the Trustees signed the defective PG transfer documents, but were shortly advised by counsel that the attempted move would not work.

32. On August 10, 2007 Cannon resigned. Within a week he wired \$866,000 to Honduras to complete his retirement home.

33. By Order dated August 10, 2007 Forlando and Terry were given free access to 90 boxes of "Brown Historical Documents," including copies the diaries of Tommie Rae and records of the \$17 Million taken by Cannon between 1999 and 2007. The available records made clear: The Cannon group Trustees should be replaced; Tommie Rae was not James Brown's wife; and

Buchanan and Pope had properly exposed Cannon's wrongdoing. Still Forlando and Terry continued their alliance with the Cannon group.

34. In September 2007 Forlando engaged PG, which also billed James Brown's Estate \$48,225 for work performed for the Cannon group Trustees.

35. In the fall of 2007 Forlando and the Cannon group Trustees devised an elaborate scheme for Dallas to file a false stipulation asserting JBE, Inc. was not in the Irrevocable Trust; lie to the Court by representing the Trustees never accepted JBE, Inc. into the Irrevocable Trust; have Buchanan and Pope, not knowing they were lying, agree with them; and then accuse Buchanan and Pope of trying to strip the Irrevocable Trust of assets.

36. Forlando, supporting the Cannon group, signed the false stipulation. Forlando's attorney David Bell later filed an affidavit with this Court asserting falsely that he advised Forlando based on advice he got from Buchanan and Pope. As paragraphs 62 through 68 of the now-dismissed Complaint in this action show, the lies presented to the Attorneys General set the tone for the destruction of the "I Feel Good" Trust which followed with a documents signed by the S. C. Attorney General less than a year later.

37. At a hearing on November 15, 2007 in Case 122 the Cannon group's plans began to unravel. By then, Cannon's known takings exceeded \$7 Million. Cannon admitted to secretly amending and filing tax returns which changed the ownership of the James Brown assets. He lied to the Court – saying he had never engaged PG. And he admitted to the \$866,000 wire to buy his turnkey retirement home. Cannon then began, and has continued, to exercise his Fifth Amendment rights.

38. He was charged in 2010 with taking more than \$12 Million from James Brown and uttering a forged document in 2008 which purported to cover up some of the takings. He entered

an Alford Plea in 2011 to some of the many millions he took.

39. On November 20, 2007, Dallas and Bradley, faced with certain removal, resigned. Dallas told the Court he had worked “hand in glove” with Buchanan and Pope. With the approval of Forlando and other Interested Persons, Judge Early entered a final written order appointing Buchanan and Pope as Trustees of the Irrevocable Trust. Forlando did not seek reconsideration of or appeal from the order.

40. Buchanan and Pope’s duty as non-fiduciary SAs was to see that assets were preserved, and did not include the defense of Brown’s Estate Plan. Their appointment as personal representatives (“PRs”), however, empowered them to protect Brown’s Estate Plan. Further, their review of the Brown Historical Documents confirmed that there was no basis to challenge the Will or Irrevocable Trust.

41. On November 27, 2007 Buchanan and Pope, to protect the Irrevocable Trust, filed pleadings in Case 122 asking the Court to declare that there was no probable cause to challenge either the Will or the Irrevocable Trust. With knowledge that they would vigorously defend against challenges to the Estate Plan and against the false claim of Tommie Rae Hynie that she was Brown’s spouse, Forlando continued as part of the Cannon group in their plan to siphon off the assets of the Irrevocable Trust.

42. On November 30, 2007 Dallas began a 3-year attempt to undo his resignation. Aided by Cannon, Forlando and Terry, he continued the planned destruction of the careers of Buchanan and Pope. Dallas, with the aid of PG, viciously attacked Judge Early in an attempt to seek his recusal. And Forlando filed the complaint in this action, re-telling the fabricated JBE, Inc. story.

43. On December 5, 2007 the Atlanta investment group seeking to buy James Brown’s

music empire – also represented by PG – officially formed TJBL, LLC, the purchase entity. On information and belief, promising to give value by filing this suit, Forlando – with no investment --- was given 39% of TJBL. By February 2008 Terry was also part of TJBL.

44. On January 2 and 9, 2007 Forlando filed the Complaint and an amendment to this case. On information and belief, this action was maliciously commenced and continued for the ulterior purpose of destroying Buchanan and Pope.

45. In February 2008 Forlando appeared on WIS Television with Attorney General McMaster to falsely accuse Buchanan and Pope of representing the family members who were challenging the Will, and not the “poor kids.” On information and belief, both had knowledge that these allegations were false.

46. From the commencement of this action until Plaintiff gave notice of its abandonment in 2012, Plaintiff has knowingly and intentionally continued to destroy the Irrevocable Trust to benefit himself and Terry, and made knowingly false and malicious statements about Buchanan and Pope, including:

- a. Forlando, Terry and TJBL, LLC, of which Forlando is a part, now assert that James Brown’s worldwide music empire was worth less than \$4.7 Million at Brown’s death, even though they have knowledge it was worth \$100 Million less the TIAA debt.
- b. Forlando has now acquiesced in the false determination of heirs of James Brown with knowledge that it will damage the Irrevocable Trust, especially the “I Feel Good” foundation and needy and deserving students.
- c. Forlando and Terry have aided in hiding the diaries of Tommie Rae, and have asserted she was Brown’s wife even though they have knowledge she was not.
- d. Forlando and Terry have agreed that Tommie Rae’s son was a child of James Brown even though Forlando has testified under oath that he is not.

FOR A FIRST COUNTERCLAIM
(Abuse of Process)

47. All allegations made above are incorporated herein where relevant.

48. Defendant Pope is informed and believes that Plaintiff maliciously commenced this legal action for the ulterior purpose of acquiring the James Brown music empire for himself, Terry and their joint venturers.

49. Plaintiff's commencement of this action was not a legitimate use of process in that, assuming Plaintiff succeeded in the lawsuit (which did not happen), Plaintiff's improper and collateral objective cannot be accomplished.

50. As a direct and proximate result of Plaintiff's abuse of process Defendant has sustained actual damages in such amount as she shall prove at trial, for which she is entitled to judgment against Plaintiffs.

51. Defendant is informed and believes that she is entitled to judgment against Plaintiff for punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SECOND COUNTERCLAIM
(Civil Conspiracy)

52. All allegations made above are incorporated herein where relevant.

53. Defendant Buchanan is informed and believes that Plaintiff agreed and combined with Terry and with third parties for the purpose of injuring Defendant Buchanan and Pope, and acted in furtherance of the conspiracy which has caused Defendant special damages as hereinabove and otherwise alleged in this Counterclaim.

54. In furtherance of these schemes, Forlando and Terry have simultaneously, and represented by the same counsel, participated in lawsuits both attacking and purporting to uphold the Irrevocable Trust and Estate Plan; asserted (correctly) that Tommie Rae is not Brown's spouse and

(falsely) that she is; and that Brown's music empire is worth less than \$4.7 Million and more than \$100 Million.

55. Upon information and belief, Defendant alleges that, by not later than November 20, 2007, in light of the resignations of Dallas and Cannon and the court appointment of Buchanan and Pope as PR/Trustees, Dallas, Cannon, Forlando and Terry realized that their scheme to sell the James Brown assets at a low value to an entity owned by one or more of themselves, with a kickback to one or more of themselves and which also included a plan to pay the fiduciary-related claims of Dallas and Cannon from the sale(s) proceeds, was in substantial jeopardy. Accordingly, upon information and belief, they jointly agreed to undertake a course of action individually and through certain duly authorized agents, to demean, discredit, attack and otherwise harm Defendants Buchanan and Pope in order to neutralize Buchanan and Pope's efforts to administer, manage and protect the Irrevocable Trust and to keep their personal agenda alive at the expense of the Irrevocable Trust.

56. In furtherance of this agreement, this federal suit was commenced, continued and not abandoned for four years.

57. As a direct result of Plaintiff's improper agreement and his many acts and intentional omissions in furtherance of the agreement, this Defendant has sustained special damages for which he is entitled to judgment, including but not limited to a) the expenditure of personal money in fulfilling the duty of protecting and defending and enhancing Mr. Brown's estate plan, b) the loss of business and income from Defendants' ordinary law practice, while dealing with Plaintiff's attempt to overwhelm Defendant and thereby force a resignation or the abdication of Defendant's responsibility under the Irrevocable Trust; and c) the further expense and time involved in collecting her claimed commission, which is fair and reasonable and customary for

performing the usual and customary duties of fiduciaries in like circumstances, and insufficient for the extraordinary duties performed by Buchanan and Pope under these circumstances.

58. Defendant is informed and believes that he is entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A THIRD COUNTERCLAIM
(Intentional Interference with Contract)

59. All allegations made above are incorporated herein where relevant.

60. Pursuant to their authority under the Will/Irrevocable Trust and Order of the Court dated January 8, 2008 which neither Plaintiff nor any other person appealed, Buchanan and Pope were parties to an approved agreement to be paid as SAs, and for partial payment of their fiduciary commissions as approved by the Court, with interest on unpaid amounts. Plaintiff was aware of this agreement.

61. Plaintiff has intentionally interfered with Defendant's contract with the state/Irrevocable Trust, causing it to be breached and Defendant to be damaged. As a result, this Defendant is entitled to compensation for damages resulting from Plaintiff's interference with the contract for SA's fees, partial commissions and costs, with interest.

FOR A FOURTH COUNTERCLAIM
(Violation of §62-1-106)

62. All allegations made above are incorporated herein where relevant.

63. The term "heir" has been used freely, and at times incorrectly, by Plaintiff, but by March 28, 2008 Plaintiff, on information and belief, had knowledge that an improper determination of heirs would damage the Irrevocable Trust under the Federal Copyright Act.

64. On or about January 30, 2009, on information and belief, Plaintiff and his father, both represented by Bell and PG agreed that Terry would support a "settlement" and false

determination of heirs which Plaintiff knew would damage the royalties James Brown intended to flow to scholarships for needy and deserving students.

65. Thereafter, in numerous representations and filings with the Court, Plaintiff has acquiesced in his father and his attorneys' representation of heirs of James Brown which, upon information and belief, is false, material and known by Plaintiff to be false.

66. On information and belief, Plaintiff intends this known incorrect determination to be relief on and acted on by the Court and the Court and others have relied on such representations, proximately causing injury to the Estate, the Irrevocable Trust and Defendants Buchanan and Pope.

67. On information and belief such representations circumvented the provisions and purposes of the South Carolina Probate Code, including §62-1-106(b)(2), which purpose is to discover and make effective the intend of the decedent James Brown in the distribution of his property and to discover and (4) to facilitate use and enforcement of certain Trust and have benefitted from the statements and filing; having been injured thereby, Defendant Buchanan, on information and belief, is entitled to appropriate relief.

FOR A FIFTH COUNTERCLAIM
(Attorney's Fees)

68. All allegations made above are incorporated herein where relevant.

69. On information and belief, Defendant is entitled to recover the costs of this action, including attorneys' fees, under South Carolina Probate Code Section 62-7-1004 and other applicable law.

WHEREFORE, Defendant prays that this Court inquire into the matters set forth herein and (a) tax all costs to the Plaintiff as a result of the voluntary dismissal of the complaint; (b) award actual damages to this Defendant in such amount as he shall prove to a jury; (c) award

punitive damages to this Defendant in such amount as a jury shall find to be fair, reasonable and just; and (d) pay attorney's fees and costs of Defendants from the Irrevocable Trust, to be equitable charged to the extent possible from the share of Plaintiff.

DEMAND FOR JURY TRIAL

Defendant Buchanan demands a jury trial as to all legal defenses and causes of action pursuant to Rule 38 and Defendant requests the Court, of its own initiative, try any and all equitable issues by the same jury sitting as an advisory jury pursuant to Rule 39.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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**Attorneys for Defendant Robert L. Buchanan, Jr.,
individually and As Trustee of the Irrevocable Trust
established by James Brown in August 1, 2000**

Columbia, South Carolina
May 18, 2012



ALAN WILSON
ATTORNEY GENERAL

November 27, 2013

The Honorable Eugene C. Griffith, Jr.
Judge, Eighth Judicial Circuit
P.O. Box 375
Newberry, SC 29108

Re: Summer v. Wilson 2012-CP-36-00688

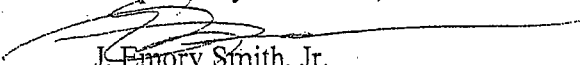
Dear Judge Griffith:

I am writing to respond to Mr. Pope's letter of last week in which he sent you the three page private part of the alleged attorneys fee contract which was declared public by the ruling of the Honorable J. Gregory Wehrman, in *Forlando Brown v. Pope*, USDC, 3:08-cv-14, a case in which this Office is not a party. Last week, this Office received its first signed copy of the contract between Sweeney, Wingate, and Barrow, P. A. and Bauknight in *Bauknight v. Pope*, 2101-40-4900. Previously, all we had was three pages of an unsigned copy. Mr. Pope's letter to you refers to the copy of the retention agreement signed with the Attorney General, but the only document signed by the Attorney General is the May 18, 2010 letter which is among the documents he sent you.

As previously communicated, the Office of the Attorney General believes that it is in compliance with FOIA and respectfully requests that the Defendant's Motion for Judgment on the Pleadings be granted. The only document remaining at issue was the above three page agreement which has been under review by Judge Manning. Although we previously stated that we had no objection to producing the document if he determines that it may be released, now that the document has been released in the *Forlando Brown* case, this issue is moot.

Thank you for your consideration of this case. Please let me know if you have questions or need additional information.

Respectfully submitted,


J. Emory Smith, Jr.
Deputy Solicitor General

cc: Thomas H. Pope, III, Esquire
Jay Bender, Esquire

Mark V. Gende, Esquire
The Honorable Jackie S. Bowers

Exhibit E - 1



ALAN WILSON
ATTORNEY GENERAL

May 23, 2014

The Honorable Eugene C. Griffith, Jr., Esquire
Judge, Eighth Judicial Circuit
P.O. Box 375
Newberry, SC 29108

Re: Summer v. Wilson 2012-CP-36-00688

Dear Judge Griffith:

In response to the proposed order of Plaintiff, I submit the enclosed revised proposed order. Most changes are on pages 4 – 6, but other edits are elsewhere in the document. I also have the following comments which are consistent with the revised order.

1. Plaintiff appears to be seeking a copy of what she has already produced to this Court. The three page Wingate / Bauknight agreement was properly withheld because it was the subject of a Motion for Protective Order and under review by the Richland County Court of Common Pleas. Bauknight. v. Pope case 2010-40-CP-4900. As noted in the proposed order, Plaintiff later obtained that document when it was declared public by a different Court, and sent it to this Court. Letter of Defense Counsel to Court, November 27, 2013 (copy attached). The Defendant Attorney General has not failed to comply with FOIA by not giving Plaintiff a copy of a document that she already has and that is still under review by the Richland County Court of Common Pleas. Nothing in FOIA requires that duplicate production be made under such circumstances.
2. Plaintiff appears to request documents that are in the possession of the Wingate firm. This request is beyond the scope of Plaintiff's FOIAs, none of which request documents in the possession of persons believed to be counsel for the Attorney General. Moreover, the Attorney General did not have any fee agreement or contract with the Wingate firm, and would not be required to produce these documents even if they, *arguendo*, were the subject of Plaintiff's FOIAs. Therefore, this request should be denied.
3. Plaintiff requests the following additional relief as to the Attorney General in a proposed order:

The Honorable Eugene C. Griffith, Jr., Esquire
May 23, 2014
Page 2

To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned, or used, the document shall be marked confidential and accompanied by a sworn certification by the Attorney General or his designee that it is his opinion, as the State's highest legal officer, such document cannot be legally produced under the FOIA. He shall state with specificity the facts and law on which he bases his opinion with respect to each document. Any certification and document shall be provided to the Court and to Plaintiff's counsel as "confidential" and shall be the subject of a hearing to be held within thirty days of this Order.

This request is beyond the scope of the Freedom of Information Act. Absolutely nothing in that law requires that documents withheld from disclosure be described under oath or under seal. Without conceding that civil discovery procedures are permitted in a FOIA action or that this request could have been framed under discovery, this request of Plaintiff is in the nature of a discovery request, and she has failed to serve any such requests in this action. She cannot make such a request at this late stage via a proposed order. Moreover, the Tommie Rae Hynie Brown diaries are the only documents not produced that are responsive to Plaintiff and are not the subject of a FOIA exception such as privilege. Plaintiff already has, as noted, the three page part of the Wingate / Bauknight agreement.

Thank you for your consideration of this letter and the revised proposed order. Please let me know if you have questions or need additional information.

Respectfully submitted,



J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for Defendant Attorney General

cc: Thomas H. Pope, III, Esquire
Jay Bender, Esquire
Mark V. Gende, Esquire



ALAN WILSON
ATTORNEY GENERAL

June 13, 2014

The Honorable Eugene C. Griffith, Jr., Esquire
Judge, Eighth Judicial Circuit
P.O. Box 375
Newberry, SC 29108

Re: Summer v. Wilson 2012-CP-36-00688
Response to Plaintiff's letter of June 12, 2014

Dear Judge Griffith:

I am sorry to be sending you yet another document in this case, but I cannot let Plaintiff's counsel's letter of yesterday go unanswered when he alleges a "false" response and engages in further speculation. His accusations of falsehood are wrong and are not supported by his letter or the facts.

Regarding the Legacy Trust, we have stated that no signed Legacy Trust exists. The *Wilson v. Dallas*, Supreme Court quotation does not state differently. It refers to an agreement to a trust called the "Legacy Trust", but it does not state that such a Trust was the subject of a signed agreement. It is not. Significantly, as previously noted, the *Wilson* Record contains drafts for the Trust but not a signed trust.

Regarding the appraisal, we have stated that we have not seen an appraisal. Instead, Plaintiff speculates that "[i]t can certainly be inferred" that the Attorney General reviewed / used this appraisal. Speculation cannot change the fact that we have not seen that document.

One of the problems with the Plaintiff's position is that she is, in effect, trying to engage in discovery by final order. Whether discovery would be appropriate in a FOIA action, including this one is not conceded and need not be decided because Plaintiff has never even attempted discovery. Instead, she is, in effect, trying to direct discovery by final order which is not appropriate.

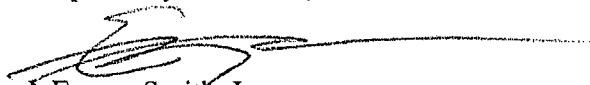
Plaintiff has moved for summary judgment which requires that no genuine material issue of fact exists. Rule 56, SCRCP. Instead of making such a showing, she is constantly raising fact issues including inappropriately filing another affidavit last week when the parties were supposed to be addressing proposed orders. Therefore, Plaintiff has stepped well outside the parameters of Rule 56, and in no way is she entitled to summary judgment.

The Honorable Eugene C. Griffith, Jr., Esquire
June 13, 2014
Page 2

In contrast, the Defendant Attorney General has answered this suit and responded to the FOIAs. He has moved for judgment on the pleadings and is entitled to judgment because the pleadings show that he has complied with that statute. Plaintiff's speculation about documents that she thinks may exist or that have been seen by the Attorney General is beyond the scope of this action at the current stage. Moreover, as noted as to the alleged documents in issue, a signed Legacy Trust does not exist, and we have not seen the appraisal. This representation should be accepted.

We respectfully request that this Court grant judgment to the Attorney General.

Respectfully submitted,



J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for Defendant Attorney General

cc: Thomas H. Pope, III, Esquire
Jay Bender, Esquire
Mark V. Gende, Esquire
The Honorable Jackie S. Bowers



SWEENEY WINGATE & BARROW P.A.

May 20, 2014

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

VIA E-MAIL: egriffithlc@sccourts.org and U.S. Mail

The Honorable Eugene C. Griffith, Jr.
Post Office Box 375
1226 College Street
Newberry, SC 29108

RE: Susan D. Summer V. Alan Wilson, In His Capacity as Attorney General of SC
Civil Action No.: 2012-CP-36-00688
Our File: 4077-7389.001

Dear Judge Griffith:

Please accept this correspondence as the Proposed Intervener's response to the proposed order submitted by counsel for Mrs. Susan D. Summer. Mrs. Summer's proposed order contains the following serious deficiencies and should be disregarded by the Court.

First, the proposed order misrepresents the contents of the South Carolina Supreme Court's opinion in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). Mrs. Summer's proposed Order incorrectly cites as controlling authority footnote 29 in the first iteration of Wilson v. Dallas, 2013 WL697042; February 27, 2013 (No. 27227), but does not mention the first opinion was purposefully expunged and replaced with a second iteration that deletes footnote 29. In fact the Westlaw reference cited by the Mrs. Summer's proposed order brings up a statement that Opinion Number 27227 has been withdrawn. Therefore, footnote 29 from that opinion is a nullity. The failure of Mrs. Summer's proposed order to inform this Court that a citation upon which it relies no longer has any legal authority is improper. Reliance on former footnote 29 in any way would be clear error.

Second, Mrs. Summer's proposed order ignores the clear language of the Freedom of Information Act (FOIA). In particular, the order neither discusses nor cites exceptions in FOIA relating to the production of certain documents. See S.C. Code Ann. § 30-4-40 (listing exceptions to disclosure including privileged documents, attorney correspondence and work product, and any other material that would violate attorney-client relationships). At best Mrs. Summer's proposed order is an incomplete legal analysis and, as such, is not appropriate for an order of the court in this matter.

Exhibit E- 2

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Third, the proposed order demonstrates the mootness of this matter, at least in reference to the fee agreement documents. In particular, the proposed order refers to and relies on portions of the fee agreement documents, thereby demonstrating that Mrs. Summer is in possession of them. It is well established law, as outlined in the Proposed Intervener's proposed order, that for the Court to consider a matter there must be a justiciable controversy. Mrs. Summer's proposed order evidences the lack of a justiciable controversy by its reference to the fee agreement, thus rendering that matter moot.

Fourth, the order seeks to impose an expansive, novel legal theory on the production of documents in response to FOIA requests. Proposed order items 3 and 4 seek to reach beyond the Attorney General's office into the attorney's notes, work product, and documents held by special counsel and potentially by any co-parties' files. This is a clear violation of the above-cited exemptions enumerated by FOIA. It is also an unreasonable and unprecedented expansion of FOIA not envisioned by the legislature. Advancing such reasoning in her proposed order is a further example of Mrs. Summer inviting the court to enter an order that amounts to legal error.

Fifth, items 3, 4 and 6 of the proposed order seek relief that is far beyond the language of FOIA and, therefore, beyond the authorization of the legislature. While the court has some discretion to craft its remedies, the Plaintiff is inviting the judiciary to invade the province of the legislature and essentially draft further requirements for responding to FOIA claims. Any proposed compliance requirements not outlined in the FOIA statute are improper as a matter of law.

Sixth, Mrs. Summer's reliance on North v. Walsh for the proposition that documents not producible in one litigation matter are subject to production in a FOIA matter is distinguishable. North addressed the Office of Independent Counsel's (OIC) criminal investigation of Oliver North's involvement in the Iran/Contra affair. The North opinion specifically states in footnote 10 that no determination had been made in a prior ruling as to whether the documents sought were subject to being withheld pursuant to the privileged documents exception in the Federal FOIA statute. North v. Walsh, 881 F.2d 1088, 1096, n.10 (D.C. Cir. 1989). In the instant matter, such a motion is currently pending before the court in Case 4900 and pre-dates Mrs. Summer's FOIA request. This court should allow the Case 4900 court to make a determination on the protections asserted, because that decision may bring the documents under the exemptions noted above in the South Carolina FOIA statute.

Finally, Mrs. Summer's Affidavit attached to her proposed order is superfluous and inaccurate by omission. Mrs. Summer's opinions on the legal matters of the proper procedure and timing for the court to fully litigate requests under FOIA are irrelevant and inadmissible. It is for the Court to determine what is reasonable and what comports with the law and civil procedure in these matters.

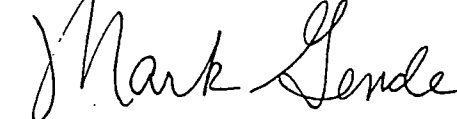
Her Affidavit is also inaccurate by omission. She states that the Proposed Intervener, among others, have asked the court in Case 4900 to "hold no hearings on the FOIA suits commenced in 2011 (or to hold hearings on the pending discovery Motions which were filed in 2010) until all James Brown matters are concluded in Aiken County." Mrs. Summer's intent appears to be to accuse the Case 4900 Plaintiffs of intentional delay of FOIA requests. The misleading nature of this quote is revealed by her significant omission of the basis for the cited request.

A stay has been requested in Case 4900, and consolidated matters, because the Supreme Court's Order in Wilson v. Dallas created conflicts among the group of Plaintiffs pursuing Case 4900. These judicially created conflicts cannot be resolved until the Aiken County will contest cases, revived by Wilson v. Dallas, are decided. The Case 4900 Plaintiffs have requested a stay because the judicially created conflicts prevent counsel from representing the Plaintiffs as a group at this time. It seems reasonable to assume from her reporting that Mrs. Summer is aware of the Case 4900 Plaintiffs' position. If she is so informed, then for her to present the requests for a stay as a delaying tactic is inaccurate and misleading and should not be included in any order. If she is not aware of the Case 4900 Plaintiffs' position, she is not competent to file an affidavit on the topic. In either case, the Proposed Intervener asks the affidavit be stricken.

The seriousness of the above-listed deficiencies render the Plaintiff's proposed order useless to this Court. The Proposed Intervener commends to the Court either of its proposed orders concerning mootness or consolidation and would also agree that the Attorney General's proposed order is acceptable as written.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/ljm

cc: Jay Bender, Esquire, Baker, Ravenel & Bender, LLP
J. Emory Smith, Jr., Esquire
Thomas H. Pope III, Pope & Hudgens, P.A.

EXHIBIT B

Witness List 11/12/2010

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 5:08
JACKIE S. BOWERS
CLERK OF COURT

| Full Name | Address |
|------------------------|--|
| Jeff Allen | 145 West 57 Street 15th Floor New York NY 10019 |
| Russell L. Bauknight | 1517 Gervais St. P.O. Box 1330 Columbia, SC 29202 |
| Jim Blackwell | 3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30326 |
| Charles Bobbitt | 3280 Golf-Linx Drive Snellville, GA 30039 |
| Daryl J. Brown | 1120 Court Drive, Apt. R Duluth, GA 30098 |
| Forlando J. Brown | 168 Liberty Hill Road Eastanollee, GA 30538 |
| Larry Brown | 110 Dresden Drive Martinez, GA 30907 |
| Terry Brown | 156 Liberty Hill Road Eastanollee, GA 30538 |
| Tonya Brown | 2417 Castlewood Dr. Augusta, GA 30904 |
| Vanisha Brown | P.O. Box 652 Clearwater, SC 29822 |
| Yamma N. Brown | 305 Legran Bend Atlanta, GA 30328 |
| Deanna J. Brown-Thomas | P.O. Box 652 Clearwater, SC 29822 |
| Robert L. Buchanan | 212 Newberry St., NW P.O. Box 463 Aiken, SC 29802-0463 |
| David G. Cannon | 9459 Marlboro Ave Barnwell, SC 29812-1982 |
| Frank Copsidas | 601 West 26th Street Suite 1080 New York, NY 10001 |
| Albert H. Dallas | 304 Black Street Thomson, GA 30824-2919 |
| William F. Hammond | P.O. Box 1564 Augusta, GA 30903-1564 |
| Tommie Ray Hynle-Brown | Los Angeles, CA |
| Joel A. Katz | 3290 Northside Parkway, Ste 400 Atlanta, GA 30326 |
| Adele J. Pope | 1228 Walnut ST Newberry, SC 29180 |
| Al Sharpton | 108 West 145th Street New York, NY 10039 |
| William H. Tucker | 111 Park Ave, SW Aiken, SC 29801 |
| Alvin Waters | Atlanta, GA |
| Calvin Waters | Atlanta, GA |
| Andre White | 5122 Hunters Luck Stone Mountain, GA 30088 |

Witness List
11/12/2010

| Full Name | Address |
|-------------|---|
| Andre White | 75 Piedmont Ave NE Atlanta, GA 30303 |

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS**

**Doyet A. Early, III, Circuit Court Judge
CASE NO. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem .. Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

**RUSSELL L. BAUKNIGHT'S PETITION FOR REHEARING
PURSUANT TO RULE 221(a), SCACR**

Russell L. Bauknight ("Mr. Bauknight") hereby petitions this Court pursuant to Rule 221(a), SCACR, and the fiduciary duty he owes the James Brown Estate and James

Brown 2000 Irrevocable Trust (“Estate and Trust”) for a rehearing of the matter decided by Opinion No. 27227 issued February 27, 2013 (“Opinion”).

Independent of his selection as the trustee for the Settlement Agreement Charitable Trust and Legacy Trust, Mr. Bauknight was also appointed as the Personal Representative and Trustee of the Estate and Trust. Pursuant to these appointments, and consistent with his fiduciary duties, Mr. Bauknight is and always has been in fact and by law independent of the Attorney General. In his capacity as the Personal Representative and Trustee of the Estate and Trust he does not serve “at the A[ttorney] G[eneral]’s pleasure” and the record is totally void of any justification for his removal. For nearly four years, he has directed his energies to overseeing the music and entertainment business that is the Estate and Trust, and substantially increasing its value and ability to fund scholarships for deserving students. To conclude that Mr. Bauknight’s “continued association with the Estate and Trust presents a significant conflict” has absolutely no basis in fact.

This Court erroneously directed Mr. Bauknight’s removal as Personal Representative and Trustee of the Estate and Trust in contravention of S.C. Code. Ann. §§ 62-3-611 and 62-7-706 (the removal statutes). Consequently, this Court is requested to issue an amended opinion deleting the language directing removal, or, at the very least, in the interest of fairness to Mr. Bauknight and to comply with the mandatory provisions of the removal statutes, remand to the circuit court with instructions to provide notice and conduct a hearing regarding Mr. Bauknight’s continuation as the Personal Representative and Trustee.

RECEIVED

JUN 17 2014

SC Court of Appeals

Trust.

B. Mr. Bauknight's Independence

In addition, Mr. Bauknight's actions demonstrate that he has always acted independent of any influence from the Attorney General. A telling illustration of his independence from the Attorney General is the Cannon restitution issue. For reasons inexplicable, the Attorney General did not seek restitution at the Cannon plea hearing. After Mr. Bauknight learned that the Attorney General made no recommendation regarding restitution, he immediately challenged the Attorney General's decision. (Bauknight Affidavit ¶10). He did so because it was in the best interest of the Estate and Trust. Based on Mr. Bauknight's actions, on September 26, 2012 the Honorable George C. James, Jr. ordered that a restitution hearing occur in the Cannon case. (Bauknight Affidavit ¶11). Mr. Bauknight will present evidence at that hearing that restitution is appropriate.² (Bauknight Affidavit ¶11).

II. IF THE REMOVAL LANGUAGE IS NOT DELETED, REMAND IS NOT ONLY THE FAIR THING TO DO, IT IS REQUIRED BY STATUTE

Not only is Mr. Bauknight an independent fiduciary serving as the Personal Representative and Trustee of the Estate and Trust, his continued service is critical to the continued financial well-being of the Estate and Trust. He respectfully requests, at the very least, that this Court remand this matter to the circuit court, with instructions to conduct a hearing and then determine whether he should continue to serve as the Personal Representative and Trustee. Mr. Bauknight has never been given an opportunity before the circuit court or this Court to address the central and critical issue of the propriety of

² Furthermore, in light of this Court's opinion, Mr. Bauknight has requested that the Attorney General redefine its party status in the 4900 litigation as a beneficiary to alleviate any perception that the Estate and Trust is controlled by the Attorney General.

**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

November 6, 2013

The Honorable Alan Wilson
South Carolina Attorney General
John W. McIntosh, Esquire
Robert D. Cook, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Re: Request for Meeting Re: James Brown "I Feel Good" Trust
Cannon Restitution Hearing

Dear Attorney General Wilson, John, Bob:

I write, again, to request that John reconsider his decision not to meet. I believe that the David Cannon Restitution hearing scheduled for the 25th has serious implication in the effort to save the \$100 million gift James Brown gave to the "I Feel Good" Foundation.

The Governor's staff has spoken to Daryl Brown about the Cannon matter. Yesterday John met over lunch with Sherri Lydon and Johnny Gasser. I respectfully ask that you meet with me.

I was the only person who filed a Victim's Statement on behalf of the needy students with Mr. McNair prior to the original Cannon plea hearing. I asked Mr. McNair to allow me to speak or present my Statement to the Court. He did not.

As a result of the *Wilson v. Dallas* decision and subsequent events, including Mr. Cannon's withdrawal of his \$5 million claim, I would like an opportunity to present my position to the Attorney General and to the Court at the hearing.

I learned of the scheduled Cannon Restitution hearing just after returning from two weeks in Kosovo where my husband was a volunteer visiting professor at Ilyria University. Seeing how that young Country is struggling to adopt and respect the Rule of Law enforces my belief that we must all remember how important it is in America.

From 2010 to 2013 Mr. Cannon, while under indictment and awaiting sentencing – despite his prior actions – was used to try to bolster a settlement the Supreme Court has declared void. That should be put behind, and Mr. Cannon treated fairly.

Everything I know about criminal law I learned either from Bill McAninch (1971) or the James Brown experience. That is:

1. The State's power to destroy the reputations & lives of its citizens is great.
2. Because of the imbalance of power between the State and its citizens, Due Process and the Rule of Law really matter.
3. The use of criminal threats and charges to achieve a civil result is tricky. It is even trickier if the civil result sought is not consistent with the public good.

A summary of what I would like to say to you and the Court follows.

We may never know for sure what arrangements Mr. Brown and Mr. Cannon may have had. But we do know this:

1. Mr. Cannon has entered an *Alford Plea* which was accepted.
2. Mr. Cannon is serving his sentence.
3. Mr. Cannon never failed to support James Brown's noble plan to leave his fortune solely for the education of needy students and \$285,000 education trusts for Lindsey, Janise, Forlando, Romunzo, Jason, Sydney and Carrington.
4. Mr. Cannon established the "Peeples DNA protocol" which will protect the "I Feel Good" Trust's Copyrights for decades, and also give Brown's DNA-proven children – and their children – the same opportunity as Brown's 6 acknowledged children, to enjoy a fair share of some of Mr. Brown's Royalties.
5. Mr. Cannon, after his plea, encouraged Daryl Brown and others to denounce the 2008 settlement which threatened far greater damage to The James Brown "I Feel Good" Trust than all of the takings with which Mr. Cannon was charged.
6. The Supreme Court's decisions in the Dallas, Cannon and *Wilson v. Dallas* appeals have saved and created a roadmap for the future of The James Brown "I Feel Good" Foundation.
7. Attempts to use Mr. Cannon's indictment and criminal proceeding to bolster the civil position of those who supported the

now-void settlement were misguided. The *Wilson v. Dallas* Decision has, however, undone most of the damage.

8. Restitution in this criminal case should be limited to return of the Roatan Mansion and the interest in Geronimo – both acquired during the relevant period.

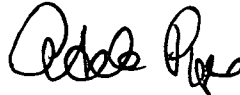
9. Restitution, if any, should be directly to The James Brown “I Feel Good” Trust, the victim.

10. The Court should make a finding that Mr. Cannon’s voluntary and permanent resignation from any fiduciary position with respect to the Estate, the 2000 Trust and Brown Entities and withdrawal of his commission claim, have neutralized the threat of any future harm.

11. The almost-7-year-old Cannon civil case should be, and has been, handled separately by Messrs. Few & Gilreath.

Thank you for your consideration.

Sincerely,



Adele J. Pope

Enclosure: Ltr. to Mr. Bauknight (10/16/23)
cc: Sherri A. Lydon, Esquire
Jonathan S. Gasser, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

State of South Carolina)
Plaintiff,)

v.)

David Gibbons Cannon,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

2010-GS-060137
2010-GS-060139

ORDER GRANTING RESTITUTION

2014 MAY -1 AM 10:54
BARNWELL COUNTY, SC
CLERK OF COURT
EN

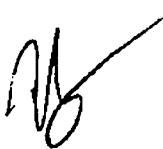
This matter is before the Court pursuant to a restitution hearing in the above referenced cases. In dealing with this matter, Judge George James granted the authority to decide restitution to Judge R. Knox McMahon. Hearings concerning restitution were heard before this Court on August 28, 2013 and November 25, 2013 at the Barnwell County Courthouse. The State was represented by Assistant Deputy Attorney General Creighton Waters, Esquire and the defendant was represented by Johnny Gasser, Esquire, Greg Harris, Esquire, and Sherri Lydon, Esquire. Evidence and testimony was presented by both the State and the defendant.

LAW

South Carolina Code § 17-25-120 codifies restitution as a remedy to the victims of a crime, stating:

If any person shall rob or take away any money, goods or chattels from any person, from their person or otherwise, and be found guilty thereof, such money, goods and chattels shall be restored to the party so robbed or the owner thereof and the judge before whom any such person shall be found guilty shall award, from time to time, writs of restitution for such money, goods and chattels.

In 1993, South Carolina set forth specific procedures and standards for restitution issues in South Carolina Code § 17-25-322. This statute states that "[W]hen a defendant is convicted of a crime

 Exhibit E - 3

which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant's criminal acts."

S.C. Code § 17-25-322(A). This section further explains factors the court may take into consideration in determining the manner, method, or amount of restitution. These factors include:

- (1) the financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;
- (2) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (3) the anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;
- (4) any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts;
- (5) the mental, physical, and financial well-being of the victim.

S.C. Code Ann. § 17-25-322(B)(1)-(5).

The S.C. Supreme Court has held that, although the trial court is allowed broad discretion in conducting restitution hearing, S.C. Code § 17-25-322 contemplates an adversarial hearing to determine the amount of restitution. *State v. Gulledege*, 326 S.C. 220, 487 S.E.2d 590, 595 (1997). The Court points out that the defendant must receive notice of the hearing and the evidence intended to be used to prove amount of restitution; and during hearing the defendant must be given an opportunity to be heard and to cross-examine witnesses. *Id.* Furthermore, the evidence admitted during the restitution hearing must be relevant, reliable, and trustworthy. *Id.*

FINDINGS AND CONCLUSIONS

1. There is no dispute between the State and defendant David Cannon about the amount of money claimed missing from the Brown Estate.



2. The State claims David Cannon embezzled \$7.7 million from James Brown from 1999 to 2006.
3. David Cannon claims he earned every penny of that \$7.7 million.
4. David Cannon pled guilty under *North Carolina v. Alford* to two counts of Breach of Trust over \$5000 as to the James Brown Trust.¹
5. The financial resources of the James Brown Trust are bleak and teetering on collapse without the payment of restitution by the defendant
6. Defendant Cannon alleges he is basically broke and has to run credit tabs for basic necessities such as food, prescriptions, and utilities. He has numerous tax liens filed against him.
7. Although the defendant claims to be on the brink of financial disaster, he earned in excess of \$12 million from James Brown.
8. The Court finds defendant's testimony about his financial condition, concerning his debts, assets, and ability to pay restitution not credible.
9. In determining where the money went, the only response given is approximately \$600,000 given to charity.
10. The defendant paid \$875,000 in cash for a seaside mansion in Roatan, an island off the coast of Honduras (hereinafter "Roatan Property").
11. The defendant claims this Roatan Property mansion is his wife's property of which he only has a 1% interest.

¹ "...In 2011, Cannon entered a plea under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) to charges of taking money from Brown, for which he was sentenced to house arrest. The prosecuting authority did not seek restitution from Cannon although Cannon reportedly retained a million-dollar mansion in Honduras as well as an interest in Brown's publishing companies." *Wilson v. Dallas*, 403 S.C. 411, 419, 743 S.E.2d 746, 751 (2013).

12. There was no testimony presented concerning the defendant's wife's employment or financial condition.

13. The defendant has an equitable lien in the multi-million dollar Roatan mansion.

14. The rehabilitative effect as to the defendant would be high as the defendant would not be rewarded by maintaining access to his ill-gotten gains that had been purchased with funds stolen from the late James Brown. The defendant should be divested of any such assets and further from any future earnings that he might receive from the Estate of James Brown.

15. After examining the evidence presented to the Court, this court finds the following assets attributable to David Cannon:

(1) 9459 Marlboro Avenue, Barnwell, SC tax value \$59,340 (State's Exhibit 2)

(2) 117 Fox Haven Blvd., Myrtle Beach, SC tax value \$144,300 (State's Exhibit 2)

(3) 676 Wellington Road, Barnwell SC tax value \$71,600 (State's Exhibit 2)

(4) Roatan Property value to be determined within 30 days of this Order.

(5) Interest in Geronimo Music, LLC value to be determined within 30 days of this Order.

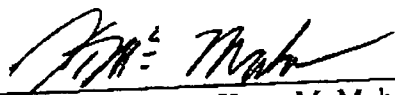
16. Accordingly, the Court orders David Cannon to transfer the Roatan Property and his interest in Geronimo Music, LLC to the James Brown Irrevocable Trust.

17. This Court gives the parties thirty days to calculate the fair market value of the Roatan Property and the defendant's interest in Geronimo Music, LLC.



18. Thereafter, the parties shall reconvene to determine the remainder amount of restitution to be paid and the defendant shall be placed on Administrative Monitoring under the South Carolina Department of Probation, Parole, and Pardon Services.²

AND IT IS SO ORDERED


The Honorable R. Knox McMahon
Presiding Judge,
Second Judicial Circuit

Barnwell, South Carolina
April 23, 2014

² "Administrative monitoring" means a form of monitoring by the department beyond the end of the term of supervision in which the only remaining condition of supervision not completed is the payment of financial obligations. Under administrative monitoring, the only condition of the monitoring shall be the requirement that reasonable progress be made toward the payment of financial obligations. The payment of monitoring mandated fees shall continue. When an offender is placed on administrative monitoring, he shall register with the department's representative in his county, notify the department of his current address each quarter, and make payments on financial obligations owed, until the financial obligations are paid in full or a consent order of judgment is filed. S.C. Code Ann. § 24-21-5;

See S.C. Code Ann. § 24-21-100, stating "when an individual has not fulfilled his obligations for payment of financial obligations by the end of his term of supervision, then the individual shall be placed under quarterly administrative monitoring, as defined in Section 24-21-5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed."



| | | |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | SECOND JUDICIAL CIRCUIT |
| COUNTY OF AIKEN |) | |
| |) | Case No.: 2007-CP-02-0122 |
| |) | Case No. 2007-ES-0200056 |
| |) | |
| |) | RETURN TO |
| IN RE: |) | MOTION/MEMORANDUM OF |
| |) | DEANNA BROWN THOMAS, YAMMA |
| THE ESTATE OF JAMES BROWN A/K/A |) | BROWN AND VENISHA BROWN |
| JAMES JOSEPH BROWN |) | |
| |) | |

Having been served as an Interested Person, which she is, by the above-named parties ("Movants"), Adele J. Pope files this Return and Response to the Request of Michael Deon Brown to be determined an heir of James Brown under State and Federal Law ("Heir") and to the opposing Response and Memorandum of Movants mailed October 22, 2013. Pope respectfully submits the Court should find:

1. Movants have confirmed through their counsel Marc Toberoff, Esq., that James Brown died on December 25, 2006 with no surviving spouse.
2. Movants have agreed that James B. is not presumed to be an Heir.
3. The Supreme Court voided Russell Bauknight's appointments, in part, to free the Estate/2000 Trust from Bauknight's incorrect and unsupported claims that Brown's companion and her son control the termination rights related to Brown's Royalties to more than 800 songs under the Federal Copyright Act (the "Termination Rights").
4. Termination Rights will matter to the "I Feel Good" Trust for 4 - 7 decades.
5. It is in the best interest of Estate and the "I Feel Good" Private Foundation to proceed with an Heirs (at death) determination unless, on pending motions of the Estate/2000 Trust filed in 2008 and 2009 all of the following occur:

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 AIKEN COUNTY
 CLERK OF COURT

a. Hynie's claims are summarily dismissed as defective; filed in the wrong Court; barred by Lukich; abandoned; filed without joining, naming and serving necessary parties; filed without summons; or otherwise defective;

b. James B. refuses to take, or does not pass, the DNA protocol, or his claims are otherwise summarily dismissed; and

c. All challenges to the Will/2000 Trust are summarily dismissed based on the public statements of all contestants in the Wingate Case that the creation of the "I Feel Good" Trust was the long-held and often-stated desire of James Brown.

6. If all of the above do not occur, Plaintiffs and not the Estate/2000 Trust, must name in the caption and serve all of the following parties with summons and complaint:

a. DNA-proven/acknowledged Heirs: (1) Nicole, (2) Jeanette & (3) La Rhonda;

b. Presumed Heirs: (4) Terry; (5) Larry (6) Lisa (7) Deanna (8) Yamma;

c. Presumed Heirs if they abandon their challenges to the Will which legitimized them: (9) Daryl, (10) Venisha.

d. Children of the above, whose Termination Rights would be damaged by Hynie's claims if not dismissed;

e. Other claimed Heirs provided they promptly undergo, and pass, the Peeples DNA Protocol: Deon (after GAL), James Curtis, James B., Tonya.

f. Children of the above (other than Tonya) who pass.

g. Devisees of the 2000 Will (and 1999 unless Will/Trust challenges withdrawn).

7. It is the duty of Hynie and the Plaintiffs in former Case 872 to properly serve all parties with Summons and Complaint, and the Plaintiffs – and not the Estate/2000 Trust --should be required to undertake that burden.

8. It is in the best interest of the Estate/2000 Trust and its primary beneficiary the "I Feel Good" Trust to determined Heirs-at-death now – based on the Peeples DNA Protocol – by DNA testing of:

1. Deon – after Mr. Levenson serves him with a Summons and Complaint in this action and the Court appoints a GAL to protect him;
2. Daryl and Venisha, unless they immediately withdraw their challenges to the 2000 and 1999 Will which legitimized them.
3. James B., James Curtis and Tonya, who should be dismissed from all actions if they do not promptly submit to and pass the Peeples DNA Protocol.

9. Movant's Return was made in bad faith; with actual knowledge that Deon, if he passes the Peeples DNA Protocol, has Termination Rights as an Heir.

10. All of the Heirs as set out above, including those passing the official DNA Peeples Protocol, have a right to be served with a summons and complaint and be allowed to participate in any attempts by Hynie, her son, Deanna, Yamma or Venisha to claim Heir status.

11. Counsel failed to name and serve the seven beneficiaries of the 2000 Trust – at least 3 of whom are not parties to any Aiken case.

12. It is manifestly unjust to make a motion where, as here, Deon was never served with the complaint and was incarcerated.

13. All "interested parties" and "opposing counsel" were not served, as claimed.

Those omitted include:

- a. Russell L. Bauknight, who purports to serve as PR/Trustee;
- b. David Sojourner, Esq., who purports to be protecting the Estate/2000 Trust in the Will/Trust contests.

14. The James Brown "I Feel Good" Trust will benefit from a baseline determination of Heirs -at-death, to give the foundation maximum flexibility to protect its Royalties for scholarships for needy students, serving the public interest.

15. It is the duty of all fiduciaries charged with the defense and protection of the Will, 2000 Trust and/or the "I Feel Good" Trust to insist that Hynie, her son and any Will/Trust challengers be properly served with a summons and complaint, and with a caption naming parties so that they will be served; afforded Due Process and bound by the Ruling: all heirs, devisees, claimed heirs seeking Peeples DNA testing, the children of these persons, Trust beneficiaries, the Estate and the 2000 Trust.

16. It is manifestly unjust and a violation of Due Process to decide Deon's Heir status without serving him because he was supported by Brown during minority under Court Order; asked to participate; is incarcerated; was not served; and has no GAL.

17. Unfair and unconstitutional treatment of Heirs of James Brown and claimed Heirs seeking the Peeples DNA Protocol harms the "I Feel Good" Trust.

18. The Memorandum/Return should be disregarded for lack of Due Process.

19. Movants have unclean hands, having commenced Case 2008-CP-02-0872 with knowledge Deon and others were Heirs or likely Heirs seeking to be joined, yet intentionally omitting and failing to serve Deon or DNA-proven Heirs LaRhonda, Jeanette, and Nicole.

20. The Court lacks jurisdiction to hear matters and issue orders in Aiken County Case 2007-ES- 02-0056.

WHEREFORE, the undersigned asks that this Honorable Court:

1. Give her notice and opportunity to be heard on the above matters.
2. Find that the "June 13 Orders" of the Honorable Doyet A. Early, III and Liz Godard cannot prevent her participation.
3. Direct Deon to be DNA tested as soon as he has been properly served with the Summons and Complaint of Movants and properly

added to and named in the caption, with others, in Case 872/1647.

4. Confirm Jeanette, La Rhonda and Nicole as Heirs of James Brown because they are DNA proven and were acknowledged by the Estate and 2000 Trust in 2007.
5. Direct that James B., Tonya and James Curtis (after being served with a proper Summons and Complaint) be dismissed as parties unless they forthwith undergo DNA testing under the Peeples DNA Protocol.
6. Hold that Daryl's and Venisha's presumption as Heirs rests on their immediate withdraw of all challenges to the 2000 Will which conferred Heir status, or take and pass the Peeples DNA Protocol.
7. Require Movants whose claims are not summarily dismissed to join; name as parties in the caption; and serve with the Summons and Complaint all Heirs and claimed Heirs seeking the Peeples DNA Protocol; their children; and others as stated, before this matter is heard.
8. Acknowledge that it is the duty of fiduciaries of the Will/2000 Trust to require Movants, Hynie and others to comply with the law and rules as relates to Summons, Complaint and proper caption and joinder and service of all Interested Parties before their matters proceed.
9. Deny Movants' request and grant the other relief requested herein.

Respectfully submitted,



Adele J. Pope

Pro Se

1228 Walnut Street

Newberry, South Carolina 29108

803-413-0753

adele @popelawfirm.com

November 11, 2013

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
) Case No. 2007-ES-02-00057
 COUNTY OF AIKEN)
) Motion to Reconsider, Vacate, Set
) Aside, Alter or Amend Order
 Adele J. Pope, Individually, as) Appointing David C. Sojourner, Jr.
 Proposed Guardian *ad Litem*, and) Special Administrator
 on Behalf of Others Under S.C.)
 Trust Code Section 62-7-405)
)
 IN RE: THE ESTATE OF)
 JAMES BROWN)
a/k/a JAMES JOSEPH BROWN)

TO: DAVID C. SOJOURNER, JR., ESQUIRE, RUSSELL L. BAUKNIGHT AND HIS COUNSEL

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as she may be heard, Adele J. Pope , Individually; as proposed *pro bono publico* Guardian *ad litem* for incarcerated Michael Brown and others ; as an Other and on behalf of all Others seeking to enforce The James Brown "I Feel Good" Trust; and as an Interested Person and Creditor with a Counterclaim for offset as to Russell L. Bauknight as Agent for Tommie Rae Hynie, James B., Terry/Forlando Brown and others as to their interests in the Estate and/or James Brown 2000 Irrevocable Trust ("Pope"), will move ten days after service hereof, or as soon thereafter as she may be heard, before the Honorable Sue H. Roe, Probate Judge ("Judge Roe") , at the Aiken County Courthouse located at 109 Park Avenue S.E., Aiken, South Carolina, pursuant to Rule 59(a) (b) and (e) and 60(a)(b) SCRPC, for an order voiding, vacating, setting aside, altering and/or amending the Order of Judge Roe Appointing David C.

Sojourner, Jr. Limited Special Administrator of the Estate of James Brown dated October 10, 2013 (the "ex parte Sojourner Order"). The ex parte Sojourner Order was not delivered to Pope. Pope learned of ex parte Sojourner Order through review of the public records on December 13, 2013. A copy of the ex parte Sojourner Order with the Probate Court's Certificate of Mailing is attached hereto as Exhibit A.

Summary of Relief Requested

On October 10, 2013 the Honorable Sue H. Roe, without notice or hearing, issued the ex parte Sojourner Order appointing David C. Sojourner, Jr. as Limited Special Administrator of the \$100 Million estate of entertainer James Brown. The Order was procured improperly by Russell L. Bauknight ("Bauknight"), who serves under a claimed appointment (on appeal) dated October 1, 2013 as PR/Trustee, even though:

1. Bauknight currently serves as agent for Tommie Rae Hynie in four lawsuits, including 3 in which Hynie and Bauknight as her agent seek to interfere with, and delay the rights of S.C. citizens under the S.C. Freedom of Information Act. ("FOIA").
2. Bauknight made an improper \$563,000 payment in 2012 to the law firm of Kenneth Wingate, Esq., which was concealed from The Honorable Doyet A. Early, III and from the Attorney General of South Carolina for more than 9 months, and until after he secured the October 1, 2013 PR/Trustee appointment.
3. Bauknight's October 1 appointment Order was issued without proper notice; without a proper hearing; and violated the statutory and Due Process rights of more than half of James Brown's heirs, devisees and beneficiaries – being the ones who are not challenging Brown's noble 2000 and 1999 Estate Plans.
4. Bauknight's October 1 appointment was improperly procured for multiple reasons, including that Bauknight secreted from the Court his confirmed intention to re-do a 2008 settlement which would take \$50 million from The James Brown "I Feel Good" Trust, severely damage the "I Feel Good" Trust's Royalties for decades;

violate the rights of Brown's real heirs; favor non-heirs Hynie and her son; and dishonor Brown's intention and right to create South Carolina's largest-ever private foundation for the education of needy and deserving students.

5. Bauknight then – *ex parte* and improperly – procured from Judge Roe the *ex parte* Sojourner Order; took responsibility for serving same on interested parties; and intentionally failed to do so.

The *ex parte* Sojourner Order is wholly void for lack of jurisdiction and should be so declared by Judge Roe and each and every court and party to which it is presented.

II. Specific Objections

The grounds of this motion are:

1. The Court failed to consider, find and order that the Probate Court is wholly without jurisdiction to issue an *ex parte* order in a formal proceeding for the appointment of a fiduciary without notice; without proper commencement of an action; without a summons; without proper service on any heir, devisee or beneficiary; without notice of a hearing; and without a hearing; and that the *ex parte* Sojourner Order was issued without jurisdiction and is wholly void and a nullity.

2. The Court failed to consider, find and order that it lack jurisdiction to issue an Order in Circuit Court Case 2008-CP-02-1647.

3. The Court failed to consider, find and order that the *ex parte* Sojourner Order was procured in bad faith; contains false misrepresentations about the service of Bauknight and his attorneys; and should be voided so that the record of his improper actions is made clear.

4. The Court failed to consider, find and order that Bauknight procured the *ex*

parte Sojourner Order with knowledge that it was contrary to the interests of the Estate, the 2000 Trust and the "I Feel Good" Trust, to benefit Hynie and her son, and that such action constitutes a serious breach of fiduciary duty even if his October 1, 2013 appointment had been valid.

5. The Court failed to consider, find and order that Bauknight has procured the the Court's special treatment of Hynie and her son James B., the only claimed child born during the 22 years between James Brown's vasectomy and death, violating the Due Process and Equal Protection right of other Interested Persons, including creditors, the "I Feel Good" Trust and Brown's real heirs.

6. The Court failed to consider and find that each and every finding in the *ex parte* Sojourner Order should be declared void for failure of proper support within the record – because there is no record.

7. The Court failed to consider, find and order that Pope is a necessary party because of her pending counterclaim for offset against Hynie, James B. and Bauknight as their agent.

8. The Court failed to consider, find and order judicial economy and efficient administration cannot override the right of heirs, devisees and beneficiaries.

9. The Court failed to consider and/or find that the *ex parte* Sojourner Order placed the valid 2000 Estate Plan of James Brown and the valid backup 1999 Estate Plan in great jeopardy.

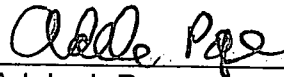
10. The Court failed to consider, find and order that it Bauknight, in bad faith, has intentionally placed the 1999 backup Will in jeopardy of the 10-year rule, and placed Sojourner in a position that he is unable to protect it.

11. The Court failed to consider, find and order that Sojourner's SA appointment under the void *ex parte* Sojourner Order leaves the "I Feel Good" Trust temporarily protected only by Pope under Section 62-7-405 because the Attorney General is not protecting the "I Feel Good" Trust; the Settlor is deceased; and Bauknight has publicly committed to dismembering it – again.

This Motion is supported by the United States Constitution; the Constitution of the State of South Carolina; the S.C. Probate Code; SCRCP, including Rules 59(a) (b) and (e) and 60(a)(b); the S.C. Appellate Court Rules; the Memorandum Related to Appealability and Supporting Affidavit, both dated December 17, 2013, filed in the S.C. Court of Appeals and the Complaint in Case 2013-CP-02-1337, all incorporated herein by reference; and such additional affidavits and memoranda as shall come before the Court prior to the hearing on this matters.

Under Rule 11 the undersigned affirms consultation with opposing counsel would serve no useful purpose.

Respectfully submitted,



Adele J. Pope
S.C. Bar No. 4501
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

Pro Se and as Stated

December 18, 2013

D:\Data\docs\BROWN ADMINISTRATION\MOTION.59.JG.ROE.SOJOURNER.ORDER..2013.wpd

Exhibit A

10.11.2013
Liz Hodard
C.C.P.&G.S.
Amita Knoepfle 300
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE PROBATE COURT

CASE NO. 2007-ES-02-005

CASE NO. 2008-CP-02-164

IN RE:

THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN

INTERIM ORDER
APPOINTING LIMITED
SPECIAL ADMINISTRATOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT
WITNESS MY HAND AND SEAL OF THE COURT THIS THE
10th DAY OF October A.D. 2013

Sue H. Roe
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.
BY D. Lewis
CLERK

This matter comes before the Probate Court on Petition for the Appointment of Limited Special Administrator, whereby this Court is requested pursuant to applicable South Carolina law, including but not limited to S.C. Code Ann. § 62-3-614 and S.C. Code Ann. § 62-3-617, to appoint David C. Sojourner, Jr. as Limited Special Administrator of the Estate of James Brown (the "Estate"). Mr. Sojourner has been appointed by Order of the Aiken County Circuit Court dated October 1, 2013 (hereafter the "Circuit Court Order") as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust").

BACKGROUND

In *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013) (the "Opinion"), the South Carolina Supreme Court affirmed in part, reversed in part, and remanded the Circuit Court's May 26, 2009 Order regarding the Estate and Trust. On May 29, 2013, the Circuit Court held a status conference concerning the Opinion and, by Order dated June 13, 2013, required all applications of those interested in serving as fiduciaries of the Estate and Trust to be made within 45 days of the date of that Order (July 29, 2013). On September 4 and 11, 2013, the Circuit Court conducted a hearing to receive testimony from all applicants for fiduciary positions in the Estate and the Trust. Mr. Sojourner appeared at the September 4, 2013 hearing before the Circuit Court

1096
SMR

Filed: 10-10-2013
Sue H. Roe
Judge of Probate
By: D. Lewis

William G. Newsome III
Member
Certified Specialist
Estate Planning & Probate Law
Admitted in SC

June 9, 2014

VIA ELECTRONIC AND U.S. MAIL

Law Office of Adele Pope, PC
Attention: Adele Pope
1228 Walnut Street
Newberry, SC 29108

Re: Adele Pope v. Estate of James Brown, et. al.
Case No. 2013-CP-02-1337 and Your Motion for Partial
Summary Judgment

Dear Adele:

As you know, pursuant to the Court's Order dated January 7, 2014, a copy of which is enclosed, the only cause of action in the above case currently before Judge Early is your Petition for Allowance of Claim. Also, as you know, Bob Buchanan is not a party to your Petition for Allowance. As you also know, Judge Early has determined that you do not have standing to bring a claim on Mr. Buchanan's behalf, and Mr. Buchanan has released all claims for fees. Please find enclosed renunciations of personal representative fees and trustees fees and a satisfaction of claim, confirming that Mr. Buchanan is no longer claiming any fiduciary fees from the James Brown Estate or Trust.

Accordingly, please withdraw the portion of your Motion for Partial Summary Judgment requesting \$500,300 with interest from May 26, 2009 for Mr. Buchanan in the above-referenced matter immediately. If you do not, I will be forced to ask Judge Early to impose sanctions for having to respond to a frivolous motion. Given that your motion is scheduled to be heard on July 8th, **please respond no later than 5pm on Friday, June 13, 2014.** Your prompt attention to this matter is greatly appreciated. This request is intended to comply with Rule 11.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

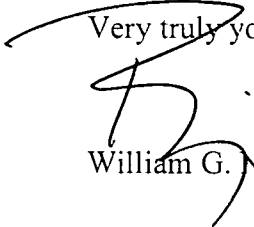
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E BNewsome@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Adele Pope
June 9, 2014
Page 2

With kind regards, I remain

Very truly yours,



William G. Newsome III

Enclosures

cc: Robert L. Buchanan, Jr. (via electronic mail)
Russell L. Bauknight (via electronic mail)

MR. BLACK:

070913JasBrown (2).txt

11 about it being improper for Mr. Bauknight to act as PR, he
12 has a conflict of interest, that they needed to stay
13 involved.

14 This court made findings in this order, it's also on
15 file with the Court of Appeals, that that's not the case
16 and that it was proper to move forward with Mr. Bauknight
17 acting as PR trustee. And, importantly, that Ms. Pope had
18 been removed.

19 Your Honor is fully aware of the South Carolina
20 Supreme Court's May 18th, 2013 opinion that goes through
21 and talks about Ms. Pope's service. It talks about an
22 irreconcilable conflict of interest that existed between
23 appellants and the settling parties. Thus the circuit
24 court, this circuit court here in Aiken, had cause to
25 remove them and replaced them with a professional

23

1 fiduciary.

2 The Supreme Court has recognized that what the Court
3 did in May of 2009 was to take her out of office. The
4 Court has found, the Supreme Court, that she was removed
5 for cause and Mr. Bauknight has served since then.

6 They also found that there was cause to remove her
7 because she sought five million in fees for a relatively
8 short period of service, that her actions were in extreme
9 discord between the parties, and her continued service as
10 a fiduciary is not in the best interests of the trust and
11 estate.

12 Your Honor, these are the findings of the highest
13 court in South Carolina.

14 Ms. Pope was removed for cause. It is the law of the
15 case. The issue of preclusion clearly shows that she was

16 removed. And judicial estoppel prevents Ms. Pope for now
17 taking a contrary position to what she was already taking,
18 Your Honor.

19 Thank you.

20 THE COURT: Thank you.

21 MS. JETT: Your Honor, may I be heard for Mr. Albert
22 Dallas in 1426?

23 THE COURT: You all have 20 minutes. How much time do
24 they have? You have a minute and 36 seconds.

25 MS. JETT: Thank you, Your Honor.

24

1 THE COURT: I'm sorry. You have five minutes and
2 eleven seconds.

3 MS. JETT: On behalf of Mr. Dallas, Your Honor, we do
4 reiterate that the Supreme Court --

5 THE COURT: Has Mr. Dallas filed anything in the
6 motion to reconsider?

7 MS. JETT: In 1426, Your Honor. It was not my
8 understanding until today that Ms. Pope was asserting that
9 she should also be made a party into his case.

10 Your Honor, we oppose that. Ms. Pope has no more
11 standing than any other South Carolinian to advocate for
12 the trust. That is the attorney general's job if and when
13 it becomes appropriate.

14 Your Honor, Ms. Pope seems to believe her claim is in
15 direct competition with Mr. Dallas's claim. But her claim
16 in whatever amount as determined by this Court is an
17 administrative claim, not a mere creditor's claim. We
18 concede that. And her claim is not in direct competition
19 with Mr. Dallas's claim.

20 Your Honor, she has no place in Mr. Dallas's case and

21 we do ask the Court to let its order from June 13th stand.

22 THE COURT: Thank you.

23 MS. JETT: Thank you.

24 THE COURT: Anyone else on behalf of any other person
25 involved? We got four minutes if anyone wants to speak.

25

1 Mr. Bell?

2 MR. BELL: Thank you, Your Honor. Your Honor, one
3 thing --

4 MS. POPE: Your Honor, I object to Mr. Bell speaking.
5 He's not admitted pro hoc vice in about five of the cases
6 and his sponsoring lawyer is here in two of the cases. I
7 object that he speak --

8 THE COURT: Thank you.

9 MS. POPE: -- in any matter except 872 and 122.

10 THE COURT: Your objection is noted. Mr. Bell?

11 MR. BELL: Your Honor --

12 THE COURT: Three minutes and 40 seconds.

13 MR. BELL: Thank you. I'll be much shorter than that.

14 Your Honor, it's interesting that Ms. Pope brought
15 this on behalf of Bob Buchanan and herself. And I'd point
16 out to the Court that Bob Buchanan settled with his
17 claim. By order of this Court he was paid \$500,000.

18 I think it needs to be determined, is he revoking his
19 settlement which would mean he'd have to pay back the
20 500,000. But he has settled and out. so her motion
21 should be by her alone and not by Mr. Buchanan and her.

22 Thank you.

23 THE COURT: Thank you.

24 MR. BELL: Thank you.

25 THE COURT: Anything else? Ms. Jowers?

1 MS. JOWERS: I had not planned to say anything since
2 there's a fiduciary in place. But I did just want to
3 address, the attorney general certainly disagrees with
4 many of the statements and characterizations that have
5 been made.

6 Thank you, Your Honor.

7 THE COURT: Thank you. And I have your proposed order
8 that I will address.

9 Mr. Rosen, you got two minutes and 47 seconds.

10 MR. ROSEN: Yes. We just join in Mr. Black's
11 argument.

12 But I will say, Your Honor, in listening to all these
13 arguments, the Supreme Court has spoken on this. In fact,
14 Justice Toal dissented and said she shouldn't have been
15 replaced. I think the issue is very clear. I think Your
16 Honor's order is correct. And we just join in Mr. Black's
17 argument.

18 THE COURT: Thank you.

19 MR. SHAHID: Your Honor, if I may make my appearance
20 known. I'm Peter Shahid on behalf of the guardian ad
21 litem slotchiver. We agree with the arguments. She has
22 no standing any further.

23 THE COURT: Thank you. Anyone else?

24 All right. Ms. Pope, you used your entire 20 minutes,
25 but I will allow you -- what do you need?

1 MS. POPE: Thank you.

2 THE COURT: what do you need? How much do you need?

3 MS. POPE: About five or seven minutes.

4 THE COURT: Seven minutes.

5 MS. POPE: Thank you.

6 THE COURT: Thank you.

7 MS. POPE: Your Honor, I think it is noteworthy that
8 the Attorney General of South Carolina did not prepare to
9 speak on this important issue.

10 The November 6, 2009 letter did not acknowledge the
11 consolidation of 1647, 122 and 872. That is entirely
12 incorrect. It acknowledged the consolidation of 1810
13 which was an appeal of the two, the two ex parte special
14 administrator and special trustee orders that
15 Mr. Bauknight had obtained and Case 1647. The 872 and 122
16 designations began to appear in about January of 2009 in
17 Case 1647. The Supreme Court actually dropped those
18 numbers because it was not an appeal of those two cases.
19 It was an appeal only of Case 1647.

20 So, that is not correct.

21 Now, it's hard to know exactly what to think now that
22 Mr. Bauknight's appointment by the order of the Supreme
23 Court has been declared void from the beginning. So, to
24 look back and talk about how his void appointment relates
25 to other things is hard.

28

1 But let me try to explain. The May 26 order was
2 unclear about whether Bob and I retained responsibility
3 over breaches of Mr. Bauknight's duty.

4 On November 6, 2009, the Court of Appeals straightened
5 that out and said that he would be the fiduciary for the
6 pending appeal. Jim Richardson and Bob and I immediately
7 said -- and he said, importantly, as Mr. Black has said,
8 all the liability and all the responsibility from May 26,

9 2009 through the appeal for the improper administration of
10 the estate and trust rests with him.

11 That was something that Your Honor's order had not
12 been clear. We immediately through letter of November
13 18th of Jim Richardson said, please substitute for us as
14 the fiduciary in all of these matters pending the appeal.
15 There was nothing improper about that. It was to help him
16 be able to continue the administration of the estate
17 pending the appeal, you know. We said, we don't want you
18 there. We think you did the wrong thing. We think the
19 settlement is bad but we of course want the estate and
20 trust to prosper during the appeal. That's all that was.

21 And the notion that standing is tied to being a
22 fiduciary, it's just not. Tommie Rae's not a fiduciary.
23 James B's not a fiduciary. Deanna's not a fiduciary.

24 I have standing. I do not claim to be the fiduciary,
25 but I have standing now as an other. I do claim to have

29

1 been the statutory fiduciary for the four years during
2 which Mr. Bauknight served under a void appointment, May
3 26, 2009 to May 8th, 2013, because under the definition of
4 fiduciary for that period, Bob and I were doing more to
5 protect the estate plan as it is defined in the probate
6 code than was Mr. Bauknight who was holding the assets,
7 who has never accounted, who has valued this hundred
8 million dollar Music Empire at 4.7 million. I am in
9 competition with him.

10 Very important, Your Honor. Nobody has yet stepped
11 forward to protect 1999 backup estate plan which should
12 have been the will contest all along. Bob and I were the
13 fiduciaries. We introduced it. If it goes 10 years after

14 Mr. Brown's death, and that could happen, that second,
15 backup estate plan, and Vorhees and USC-Aiken and
16 USC-salkehatchie, the backup, the ones who should be in
17 the real will contest if there were one, are out in the
18 cold.

19 I have standing as an other who cares about the I Feel
20 Good Trust, not as a fiduciary, to see that that does not
21 happen.

22 standing. As for Ms. Jett's comment, both the
23 bankruptcy trustee and Mr. Bauknight and Mr. Dallas
24 himself before they hired Ms. Jett have consented on the
25 record for me to be in his claim case. On the record.

30

1 I wasn't prepared for what she had to say today but
2 Your Honor might check the record. I have standing in his
3 claim case because the Nexsen Pruet lawyers told the
4 bankruptcy court that all of the fiduciary commissions
5 must be determined in the same proceeding. I didn't agree
6 with them then, but I do think it's a good idea now.

7 Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. The next order of business today is to
10 have a status conference on --

11 MR. ROSEN: Your Honor, would you entertain having that
12 in your office --

13 THE COURT: Absolutely not.

14 MR. ROSEN: -- and putting Mr. Levenson on the line?

15 THE COURT: Absolutely not. Mr. Levenson was given
16 notice of today.

17 I have -- I told everybody, I do not have capabilities
18 out here for telephone conference. And, I told everybody

19 at the initial status conference. I had bent over
20 backwards forever trying to accommodate everybody's
21 schedule. I did not do 1647 two weeks ago or last week
22 because of Mr. Levenson's schedule. And I'm not doing
23 that out of spite or anything, I just don't have the means
24 of doing it. And I have learned that everything in this
25 case, nothing's going to be done in my chambers. I think

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1 you understand why.

2 MR. ROSEN: I do, Your Honor.

3 THE COURT: I mean, there's been all kinds of
4 assertions by lawyers and everyone else about things said
5 back there that just absolutely was not true. So
6 everything's on the record.

7 So I assume somebody is here for Mr. Levenson and his
8 contest of the will.

9 MR. ROSEN: He is not here and, you know, Mr. Levenson
10 is so well educated on the ins and outs of this case, but
11 if there's no way to do it, there's no way to do it.

12 THE COURT: There's no way to do it.

13 MR. ROSEN: We'll just muddle through.

14 THE COURT: But, I mean, I have all due respect in the
15 world for Mr. Levenson and all of y'all, but I just don't
16 have the means of doing it unless I move the court
17 reporter back there and everybody comes back there. Just
18 can't do it.

19 But I think we can -- I mean, I'm not going to
20 sanction him for not being here.

21 MR. ROSEN: Your Honor, I hesitate to make the
22 suggestion because what I know about cell phones mostly
23 comes from my children, but perhaps there's some way to

24 have a speaker phone set up so it could all be on the
25 record. But maybe not.

32

1 You know, in Charleston County they can put people on
2 telephones.

3 THE COURT: We're not in Charleston.

4 We start doing that, next time Mr. Rosen is going to
5 do it and then Mr. Shahid and then somebody else.

6 All right. Pursuant to my administrative order and
7 the order of the Supreme Court -- the decision of the
8 Supreme Court, my order was signed on 6-13, June 13 and
9 filed. And it provided for 45 days for application to be
10 made for the handling, I think is how the Supreme Court
11 said, of the balance of this case. That 45 days has not
12 yet expired.

13 I think the language was upon proper application,
14 which I've received none, to appoint fiduciaries to
15 oversee these matters. I assume these matters are the
16 litigation of the three issues at hand, i.e., the will
17 contest; Mr. Rosen, your client's claims; and the young
18 child's claim.

19 And then in addition to that, obviously we have to
20 continue with the administration of the estate, dealing
21 with marshalling of any assets, those assets that are out
22 there, continuing to deal with a number of claims that are
23 still outstanding and in general probating of the estate
24 and then once all of that is done the setting up of the
25 trust, depending on how the other contests come out.

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1 So we got, as I see it, a two-prong approach to this
2 thing, i.e., handling the contest against the will, the

3 child's claim, Mr. Rosen, your client's claim.

4 At the same time we have, obviously we want the estate
5 to continue to be administered and to move forward in a
6 very deliberate manner and maximizing all of the
7 opportunities, i.e., for example, the movie contract, et
8 cetera.

9 Now, since the signing of my order, I have not
10 received any applications. Quite stunning because I don't
11 know too many people who want to apply for this job.

12 Now, can I share your e-mail yesterday?

13 MR. BLACK: You can, Your Honor.

14 THE COURT: Those in attendance at the status
15 conference last week on Tuesday in Bamberg, you heard me
16 discuss with Mr. Bauknight's counsel, Mr. Black, my
17 concern as to whether or not there were any conflicts
18 between Mr. Bauknight and his lawyers in trying to deed
19 the correct persons to litigate those three claims, i.e.,
20 did they receive information during the settlement
21 process, during the arguments before the Supreme Court,
22 and whether or not they could in good faith stand against
23 the claims made against the estate. In other words, were
24 they going to be the strong adversaries for the upholding
25 of the estate plan.

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1 I asked them to get me an opinion from someone
2 dealing, an expert in ethics. well yesterday I received
3 from Mr. Black an ethics opinion or a letter from
4 Professor Crystal that eases my concerns dealing with
5 that.

6 But at the same time Nexsen Pruet through Mr. Black
7 has informed me that they feel like or they made a

8 decision or will be making a decision or will be
9 petitioning the Court to carve out Mr. Bauknight from
10 having to be involved in the litigation, i.e., the will
11 contest and the child and Mr. Rosen's client's claim.

12 And they have contacted Mr. David Sojourner. For
13 those of you who do not know, Mr. Sojourner is highly
14 distinguished as an estate lawyer, estate planner and the
15 role of estates. He has not made application to this
16 Court but I see him sitting in the courtroom so I assume
17 he is going to make application as a special administrator
18 for the sole purpose of defending the estate against the
19 claims made by Rosen, Levenson and Shahid.

20 Obviously I can't deal with that and the 45 days
21 expires on June 28 -- strike that, July 28. And I still
22 have not received an official application, whatever
23 application may be, from anyone.

24 Assuming that Mr. Sojourner applies and I don't know
25 that anybody else will and whoever I do appoint for that I

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1 want that person to hit the ground running and I want
2 these three cases put on a very strict scheduling order
3 for early disposition. I mean, they've been around for a
4 long time.

5 So in that regards I'm going to need to know from
6 Levenson et al, Rosen et al, Shahid et al, what needs to
7 be done to put your case in a position that it can be
8 tried or either heard on a non-jury basis. I assume,
9 obviously, the challenge based on undue influence and
10 competency is a factual issue, highly factual issue that
11 will have to be tried.

12 Mr. Rosen, I'm not so sure about your claim. Is it

13 factual or legal?

14 MR. ROSEN: Your Honor, we've given that a great deal
15 of thought. The issue of the validity of the marriage we
16 think is a legal issue. In fact, we filed a motion for
17 summary judgment. There's no way to keep track of this
18 file. I have a hard enough time keeping track of my part
19 of it, but we filed a motion for summary judgment on the
20 grounds that there's no genuine issue of material fact as
21 to Mrs. Brown's marriage to Mr. Brown. She's entitled to
22 summary judgment on the issue of the validity of the
23 ceremonial marriage. In other words, not talking about
24 the prenup. That arguably is a factual issue. Not
25 talking about common-law marriage, but whether or not the

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1 ceremonial marriage is valid.

2 That's really a legal question. It's been debated to
3 death. Everybody in this room has read the cases, the
4 Rubich (phonetically) case, et cetera. So we think that's
5 ready for summary judgment as soon as a possible time
6 because either we're in or we're out. I mean, if she is
7 the wife, then somebody, if they choose to, can raise this
8 issue about prenuptial. We'd be happy to meet that either
9 in front of Your Honor or in front of a jury, however you
10 may want us to do it.

11 THE COURT: So what you're telling me succinctly is
12 that you have a motion filed for summary judgment that may
13 be ripe as soon as I appoint someone as a -- if I do that,
14 as a special administrator, for contesting -- or handling
15 the contest against the estate?

16 MR. ROSEN: Right. But we would request Your Honor
17 and, you know, Mr. Medlin is not here but he feels very

18 strongly that we need a different case number for the
19 elective share, the omitted spouse and the omitted child.

20 Now these are separate cases. I mean --

21 THE COURT: I think my administrative order addressed
22 that; if anybody felt like that, just make a motion and I
23 can sever all three of them out, let them go --

24 MR. ROSEN: we'll file that motion. we think we can
25 get in front of you on summary judgment, depending on what

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1 happens next, whenever you want. I mean, talk about fast,
2 we can do it in two weeks. so whenever everybody is
3 ready, we're ready.

4 THE COURT: All right.

5 MR. ROSEN: And then that will tell us a lot. If you
6 say she's not the wife, well, you know, then it's been
7 good knowing everybody and I guess we just go --

8 THE COURT: I guess you go to Columbia.

9 MR. ROSEN: -- go up to Columbia or whatever. But if
10 she is the wife under ceremonial marriage, then we have to
11 defend --

12 THE COURT: I understand all of that but the point of
13 my question is this. That you are -- it would not be a
14 lot of discovery needed, you don't think, in order to
15 address that issue.

16 MR. ROSEN: No discovery, no discovery. And I mean
17 none, because either she's married or she isn't. That's
18 purely a legal matter.

19 THE COURT: Mr. Bell?

20 MR. BELL: Your Honor --

21 MR. ROSEN: Your Honor, let me object to Mr. Bell's
22 participation. I am going to take exception to this.

23 Mr. Bell is not admitted to this case. He is admitted pro
24 hoc vice under the will and trust dispute. He's not --
25 his client's not parties, will never be parties to this

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1 case involving Tommie Rae for a variety of reasons. And
2 In any event, he's not admitted to address this issue.

3 THE COURT: Thank you. All right. Hold on. I'll get
4 to all y'all in a minute.

5 Mr. Shahid, what's the status of your situation?

6 MR. SHAHID: Judge, I think probably we may be in the
7 same boat with Ms. Tommie Rae Brown on filing a
8 dispositive motion as well. I'd like a little more time
9 to explore that and see, because it really doesn't depend
10 on the successor or the special administrator that you're
11 going to appoint. But I think perhaps if we file a
12 dispositive motion, we may be able to abstract a
13 resolution of this case as well.

14 THE COURT: well, here's the concern. Obviously 45
15 days is not up until the end of the month, this month.
16 And if I appoint someone they can't do it the next week.
17 They've got to get their feet wet and become familiar with
18 the issues and obviously they have to -- I have to
19 consider how much time they will need to be in a position
20 to defend those motions and et cetera.

21 Of course, Mr. Levenson's situation's a whole
22 different ball game. I assume that's going to require a
23 good bit of discovery, or perhaps. I don't know. And
24 obviously that is a jury trial without any question.

25 So my thoughts are this. Obviously I can't enter into

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1 (Laughter.)

2 THE COURT: All right. I understand your position.

3 MS. POPE: Thank you, Your Honor.

4 THE COURT: I will do as I deem necessary.

5 MR. BLACK: Your Honor, you do have a technological
6 advance in the courtroom. I see Mr. Ness was able to pull
7 up the opinion. I was going to reference the same thing.

8 Just for the record, the opinion before the South
9 Carolina Supreme Court has nothing to do with the case
10 coming from Richland County.

11 THE COURT: I understand.

12 MR. BLACK: Your Honor, I also -- just to make sure
13 the record is also correct, that was Mr. Bauknight's
14 admiral decision. He debated about that --

15 THE COURT: You're talking about 4900?

16 MR. BLACK: No, Your Honor. His decision on the
17 separate SA issue. You had referenced it being a Nexsen
18 Pruet decision and I can't --

19 THE COURT: Well, maybe I misstated on that.

20 MR. BLACK: It was Mr. Bauknight's decision after a
21 thorough review, after reviewing the expert witness's
22 materials indicating there was no conflict, but it was
23 Mr. Bauknight facilitating his duties of --

24 THE COURT: Well, is anyone aware of anyone else who
25 is interested in applying or making an application or upon

1 proper application?

2 MS. POPE: Your Honor, I know a number of people who
3 would be interested in serving. And I was hoping to have
4 a ruling from Your Honor so I wouldn't get slapped down if

5 I filed a petition.

6 I'm not seeking the position myself. Anybody thinks I
7 want to stay on is dead wrong. I do have a deep interest
8 in this. And I know several people who are interested.
9 And as Your Honor knows, there was an advisory board in
10 place and the mandate from Wilson versus Dallas says do it
11 in accordance with the documents.

12 THE COURT: I understand.

13 MS. POPE: And we have not even gathered together that
14 distinguished advisory board to ask them who they would
15 like to serve as the fiduciary.

16 THE COURT: Thank you. Anything else?

17 MS. POPE: There are lots of people without notice.

18 MR. BELL: May I be heard briefly, Your Honor?

19 THE COURT: You may. You've got a situation. I don't
20 know. They're claiming that you have not been admitted in
21 some of these cases, so...

22 MR. BELL: Your Honor, I have been admitted in the
23 ones that were originally pending in front of the case
24 (verbatim), and the one currently that was -- Mr. Bodman
25 filed a motion to have me admitted in the number that is

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1 currently -- in which everything is consolidated.

2 THE COURT: 1647.

3 MR. BELL: Yes, sir.

4 MS. POPE: He's never been admitted in 1647. That's
5 wrong, Your Honor. He was admitted in 122 and 872. He
6 never even applied in 1647 even though he argued in that
7 case from January until May.

8 THE COURT: Thank you.

9 MS. POPE: He has not been admitted in that case.

11 can be held in abeyance until the other one is decided.

12 MS. POPE: And, Your Honor, it's this one.

13 THE COURT: I am moving forward as directed by the
14 Supreme Court in these cases in Aiken County in the most
15 efficient, legal way I know, considering everybody's
16 position.

17 MS. POPE: I understand --

18 THE COURT: But I've got my marching orders. I've
19 already been through this thing and I'm now handling it in
20 Aiken, what I have left. what I have left is the contest
21 Mr. Levenson has, Mr. Rosen's claim, Mr. Shahid's claim.

22 MS. POPE: what you have left, Your Honor, is a suit
23 for 10s of millions of dollars against Bob Buchanan and
24 me.

25 THE COURT: I do not have that.

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1 MS. POPE: You do, Your Honor.

2 THE COURT: How?

3 MS. POPE: Because the person who is appointed to
4 administer the estate of James Brown under his valid will
5 is a party to that case, has sued me.

6 THE COURT: well, I don't know anything about the case
7 in Richland. I don't -- other than Mr. Buchanan has
8 settled for a sum as set out in the documents.

9 MS. POPE: That -- I was not given notice of that
10 hearing, if Your Honor will recall.

11 THE COURT: well, Mr. Buchanan came before me asking
12 me to approve the settlement in this court, in his claims
13 that he had in this court.

14 MS. POPE: I understand. Yes, Your Honor.

15 THE COURT: Anyway, Ms. Pope, I am going to -- if I

16 appoint someone here to litigate three claims in Aiken
17 County, I don't know what happens in Richland County, I
18 don't know whether Judge Manning is going to put it on
19 hold until all of this is done. I don't know what he's
20 going to do. I just don't feel comfortable in discussing
21 the case with him.

22 MS. POPE: If I could just make one more comment?

23 THE COURT: Absolutely.

24 MS. POPE: You cannot possibly comply with the Wilson
25 versus mandate -- Dallas mandate without completing Case

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1 4900.

2 THE COURT: who can't comply with --

3 MS. POPE: Your Honor. You cannot possibly comply
4 with that mandate without the completion of Case 4900.

5 THE COURT: well, 4900 -- was the 4900 case mentioned
6 in Wilson versus --

7 MR. ROSEN: Just for your information, Judge --

8 MS. POPE: Yes, yes.

9 MR. ROSEN: -- of course, we disagree with everything

10 Ms. Pope says. It goes without saying.

11 THE COURT: well, you know, I understand her concerns
12 and I appreciate her concerns. And she has been here
13 since day one and I appreciate all that she's done.

14 But I've got my direction, I feel like, from the
15 Supreme Court. And without beating a dead horse, my
16 direction is this: To conclude the litigation involving
17 the contest against the will, i.e., undue influence, et
18 cetera, your claim and your claim, Shahid, Rosen.

19 And I'm going to do that. And I'm not sure how it's
20 going to play into what's going on in Columbia. The

21 Supreme Court has said: we are aware that a suit has been
22 filed in Richland County seeking damages to Brown's estate
23 allegedly during appellate service. I guess that's Pope
24 and Mr. Buchanan. And then it mentions something about
25 FOIA.

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1 I just don't know how I can be held hostage in moving
2 about deciding this case with what's going on in
3 Columbia. I'm not going to be in that situation.

4 MS. POPE: Your Honor, I don't think it's being held
5 hostage --

6 THE COURT: well, maybe that's a bad choice of words.

7 MS. POPE: -- to decide there are matters over which
8 at the request of Mr. Bauknight, the State of South
9 Carolina and Tommie Rae, the Richland County case has
10 taken exclusive jurisdiction. We fought the
11 jurisdiction. We thought it should be here, venue. But
12 it's not.

13 THE COURT: well, I don't know that they've got --

14 MS. POPE: And therefore --

15 THE COURT: -- exclusive jurisdiction. I mean, if
16 they had exclusive jurisdiction the Supreme Court would
17 have told me to sit tight.

18 MS. POPE: Your Honor, they have sole jurisdiction.

19 THE COURT: Okay.

20 MS. POPE: Until it's concluded over the matters
21 there. I think that's what the probate code says.

22 We didn't want it there, Your Honor. We wanted it
23 back here. We thought that was wrong.

24 THE COURT: well, with all due respect to everybody, I
25 certainly didn't want it back.

25 Carolina, Second Circuit-At Large, do hereby certify that

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1 the foregoing proceedings were written stenographically by
2 me to the best of my skill and ability using computer-
3 aided translation; further, that the foregoing is a true,
4 accurate and complete record of all the proceedings had
5 and evidence introduced in the hearing of the captioned
6 case, relative to appeal, in the Court of Common Pleas for
7 Aiken County, on the 9th day of July, 2013.

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

10 I have hereunder set my hand this 14th day of
11 September, 2013.

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Cheri L. Young, RPR
Official Court Reporter

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STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 13 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Doyet A. Early, III Circuit Court Judge

Case No.2013-002582 (Order, S.C. Ct. App., filed May 22, 2004)

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is the.....Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas
and Tommie Rae Hynie are..... Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna
J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

PETITION FOR WRIT OF CERTIORARI

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JUN 13 2014

SC Court of Appeals

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Petitioner, *pro se*

Exhibit H-1

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 I. Dismissal of the appeal should be reversed because the Bauknight Appointment Order is final and appealable; Petitioner is aggrieved; and Petitioner has standing to appeal. 15

 II. Bauknight’s irreconcilable conflicts, including serving as agent for Tommie Rae, preclude his serving as PR or Trustee.. 20

 III. The Court’s appointment of one PR/Trustee violates *Wilson v. Dallas*. 21

Conclusion 24

CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on May 22, 2014.

June 13, 2014


Adele J. Pope

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SC Court of Appeals

QUESTIONS PRESENTED

- I. **Should dismissal of the appeal be reversed because the Bauknight Appointment Order is final and appealable; Petitioner is aggrieved; and Petitioner has standing to appeal?**
- II. **Do Bauknight's irreconcilable conflicts, including serving as Agent for Tommie Rae, preclude his serving as PR or Trustee?**
- III. **Did the Court's appointment of one PR/Trustee violate *Wilson v. Dallas*?**

INTRODUCTION

Petitioner asks this Court to reverse the decision of the South Carolina Court of Appeals dismissing her appeal of the order of the Honorable Doyet A. Early, III, dated October 1, 2013 appointing Russell L. Bauknight to serve as sole fiduciary under the will and 2000 Trust of entertainer James Brown ("PR/Trustee")¹.

Petitioner asks this Court to find that the appointment order is final and immediately appealable; she has standing; and she is aggrieved by the order.

Petitioner and Robert Buchanan, Jr. as Brown's PR/Trustees. Their replacement by the circuit court was affirmed in this Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

During the pendency of the *Wilson v. Dallas* appeal, Buchanan and Petitioner were sued for ten million dollars or more by the Attorney General of South Carolina ("AG") and Bauknight acting on behalf of the AG, Tommie Rae

¹ Petitioner also appeals the form 4 Order which denied reconsideration of the October 3, 2013 order.

Hynie ("Tommie Rae") and others in Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). The law firm of Kenneth Wingate, Esquire ("Wingate") is sole plaintiffs' counsel in the Wingate Suit.

Since 2011 the AG and Bauknight have succeeded in having two Newberry County suits filed by Petitioner under the South Carolina Freedom of Information Act ("FOIA") moved to Richland County. One has been consolidated with the Wingate Suit. Another awaits a consolidation hearing.

The AG and Bauknight are seeking to have the unrelated FOIA of a journalist transferred to Richland County and consolidated with the Wingate Suit. [Appendix, p. 157]

Petitioner is a creditor of Brown's estate. Since May 8, 2013 she has served *pro bono publico* to help anyone interested in enforcing the "I Feel Good" Foundation. [Appendix, pp. 68, 70-71]

Petitioner was enjoined from participating in the Bauknight appointment proceeding by orders issued *sua sponte* without notice or hearing on June 13, 2013, by the Honorable Doyet A. Early, III. The June 13 orders, failing to note that Petitioner is being sued by the Estate and 2000 Trust directed that *Wilson v. Dallas* prevents Petitioner from participating in any James Brown trust or estate case. [Appendix, pp. 173-74]. s being sued by the Estate and Trust in the Wingate Suit.

The appointment order was granted based on a petition not served on anyone, and after a hearing at which only the circuit court posed questions. No examination was made of the FOIA cases and Wingate Suit. Bauknight's

continued service as fiduciary and agent for Tommie Rae was not mentioned. [Appendix, pp. 161-62, 164]. What appears to have been an unauthorized 4-year claim that Bauknight is acting for the State/AG was not addressed.

The appointment order praises both Bauknight and his attorneys for their accomplishments; appoints Bauknight sole PR/Trustee; and designates his appointee to perform certain tasks.

The appointment order damages Petitioner. It places the "I Feel Good" Trust in great jeopardy. The implications of the appointment order threaten private philanthropy in South Carolina.

Statement of the Case

On May 8, 2013 the South Carolina Supreme Court decision in *Wilson v. Dallas* voided a 2008 settlement reached by the AG which dismembered James Brown's "I Feel Good" Foundation.

The Court voided the appointment of Bauknight. It directed the circuit court, upon proper application, to appoint fiduciaries to oversee these matters in accordance with the provisions of Brown's estate and trust, and to evaluate the propriety of all fees related to the case. *Id.* at 449-50, 743 S.E.2d at 767-68.

At a status conference held May 29, 2013 counsel for Tommie Rae and attorney Louis Levenson, Esquire ("Levenson") announced their intention to reinstate the Attorney General's 2008 settlement. The AG announced his intention to withdraw from the Aiken County cases.

On June 13, 2013 the circuit court *sua sponte* issued orders enjoining

Petitioner from participating in James Brown estate and trust cases².

The circuit court's June 13 orders directed that Petitioner's unheard motions be removed from the public record, and that the clerk not accept future filings. [Appendix, pp. 113, 126, 127]

On July 29, 2013 Bauknight filed a petition to be sole PR/Trustee. He asked for a limited appointment of David Sojourner. [Appendix, p. 9]

The petition failed to name heirs, beneficiaries or creditors with proper demands for notice. The petition was not served on anyone. [Appendix, p. 50]

On September 4, Bauknight presented his petition to the circuit court. No questions were allowed to be asked by those attending. [Appendix, p. 10]

On October 3, the Bauknight appointment order was filed. [Appendix, p. 8] The order did not name the parties. [Appendix, p. 8]

On December 9, 2013, after denial of her timely motion to alter or amend by Form 4 order, Petitioner served an amended notice of appeal of the orders.

The appeal was filed with an appeal of the June 13 injunction orders, Appellate Case No. 2014-001649. It was treated by the Court as a different case.

On December 12, 2013 Petitioner sought direction as to the parties to the appeal because the appealed orders did not name parties. [Appendix, p. 36]

On December 23, 2013, Petitioner filed a memorandum related to appealability and an affidavit in support of the motion. [Appendix, pp. 39, 67]

² The June 13 orders did not address the Wingate Suit which the AG and Bauknight in multiple capacities against Petitioner and Buchanan in 2010; two FOIA suits in which Bauknight was seeking to intervene; or the "Forlando Federal Suit" brought by Forlando Brown on January 2, 2008 to enjoin the 2000 Trust until Respondents Cannon and Dallas were reinstated.

On January 30, 2014 Petitioner served a reply to the letter/return of Mr. Sojourner to her memorandum related to appealability. [Appendix, p. 103]

On January 30, 2014 the Honorable Paul E. Short, Jr. issued an order dismissing the appeal. [Appendix, p. 3]

On February 12, 2014 Appellant served a petition for rehearing; a memorandum seeking abeyance; and an affidavit. [Appendix, pp. 125, 132, 140]

On February 24, Bauknight filed returns to the rehearing and abeyance motions. [Appendix, pp. 142, 150]

On February 28, 2014 Petitioner replied. [Appendix, pp. 153, 189]

By Order dated May 22, 2014, Judge Short, for the Court, denied Petitioner's Petition for Rehearing. [Appendix, p. 1]

Statement of Facts

On August 9, 2008 the estate plan of James Brown was ironclad. It was even confirmed in his own voice tape. [Appendix, pp. 40, 117, 167]

An official DNA testing program for non-presumed children was being used to identify Brown's heirs under the Federal Copyright Act. The estate was working to have termination rights agreements with the most cooperative half of Brown's children not challenging his estate plan. This would secure the "I Feel Good" Trust's 800+ copyrights for decades. [Appendix, pp. 204, 205]

All of Brown's acknowledged children and his fiduciaries were on record confirming Brown was not married at his death. This position was supported by complete records of the legal wrangling between Brown and Tommie Rae after Brown discovered she was married when they conducted a 2001 ceremony.

On July 30, 2008 the AG had written Petitioner and Buchanan to approve their permanent service as Trustees. The AG never challenged them as PRs.

On August 10, 2008 the AG reached a settlement, set out in detail in *Wilson v. Dallas*.

Tommie Rae and her son were declared to be Brown's heirs. At least half of Brown's children were excluded from the AG's 2008 settlement.

The AG contracted with Tommie Rae and others:

...that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust... [Appendix, p. 160]

On January 30, 2009 Terry joined the AG's settlement and acquired a right of first refusal ("ROFR") to buy the estate assets. [Appendix, p. 161]

On January 30, 2009 Bauknight asked the circuit court to approve the settlement. [Appendix, p. 160]

On May 26, 2009 the circuit court approved the AG's settlement. Buchanan and Pope were replaced. Bauknight, in addition to being trustee of the AG's Legacy Trust, became PR/Trustee.

The Advisory Board was not consulted. Buchanan's and Pope's nomination of former Warner Music executive Ray Gonzalez and distinguished attorney Ronald Stanley as their successors was not considered.

Buchanan and Petitioner, as required by Brown's documents, appealed.³

There was simply no legal or factual support for giving Tommie Rae about \$11 million or her attorneys about \$10 million. Nor was there any reason to give 25% of the "I Feel Good" Trust assets to the Levenson clients, with about \$9 million going to Levenson. [Appendix, pp. 166-67]

All who challenged Brown's estate plan have confirmed:

...the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. [Appendix, pp. 166-67]

Terry's ROFR posed another problem: the threat of devaluation by the "family" to acquire the music empire from the "I Feel Good" Trust.

On May 19, 2010 three lawyers expecting about \$20 million from the AG's settlement, with Bauknight, secretly signed a 40% contingency fee contract authorizing the Wingate Suit.

On May 19, 2010 the AG and Bauknight sued Buchanan and Petitioner in the Wingate Suit. Buchanan later described to the circuit court how the Wingate Suit, unwarranted attacks and no pay damaged him:

In the spring of 2010 I was given an ultimatum by the settling parties: dismiss the appeal or be sued. In May 2010 they sued me for \$10,000,000.00 in Case 4900 Richland County. This lawsuit caused, inter alia, my successor professional liability carrier to refuse to renew my coverage and to sue me.

As I was and am the sole breadwinner in my household, through the years

³ The 5-year legal cost of protecting the estate plan, including for the seven days of circuit court hearings, was about, \$200,000. Their own involvement and the *pro bono publico* service of lead appellate counsel James B. Richardson, Jr. helped reduce costs down. [Appendix, p.]

I utilized assets which my wife and I owned jointly, to supplement the lost earnings...

In January 2011 the AG amended the Legacy Trust. Terry transferred his estate interest and ROFR to Forlando. [Appendix, pp. 166-67]

In March 2011 the Court of Appeals dismissed as premature an appeal by Buchanan and Petitioner challenging Wingate's serving as sole attorney for the State/AG and Tommie Rae.

In April 2011 a draft professional article, *Private Foundations, Copyright Heirs and Musical Millionaires: or Why the James Brown "I Feel Good" Trust doesn't...*, outlined the devastation of the "I Feel Good" Trust's copyrights calling a non-wife a wife and giving Terry the ROFR. [Appendix, p.83]

In May 2011 Bauknight and the AG asked the Supreme Court to supplement the record on appeal ("ROA") in the *Wilson v. Dallas* appeal with a \$4.7 million value for Brown's music empire and \$.5 million for his tangible personal property.⁴ Previous fiduciaries, under oath valued the music empire at about \$84 million. The Court declined. [Appendix, p. 114]

In 2011 the AG and Bauknight began to accuse Buchanan and Petitioner of the federal felony of intentionally overstating the value of Brown's music empire by \$79 million to the IRS on the estate tax return for the improper purpose

⁴This reduced the value to less than 1/15 the valued reported by Petitioner under oath to the IRS, and changed it from the \$100 million less \$15 million TIAA debt reported by Respondent Dallas on the original I&A.

Bauknight did not file the appraisal supporting the amended I&A as required by the South Carolina Probate Code ("SCPC").

of obtaining a \$5 million commission. [Appendix, p. 62] If true, this false claim could have ended their careers⁵.

The AG and Bauknight claimed there was no support for the \$84 million value. [Appendix, p. 197] The \$84 million was consistent with a valuation formula presented to the Circuit Court by Buchanan and Petitioner in 2007 before their appointment and before any challenges to the Will. Neither the AG nor anyone opposed the formula. [Appendix, pp. 61-63]

The AG and Bauknight told the Court there was never an offer to buy Brown's music empire. At the same time they were suing Buchanan and Petitioner for not accepting a \$100 million offer.⁶ [Appendix, pp. 61-63]

Bauknight claims his \$4.7 million is the first professional appraisal. But a professional 2006 Royal Bank of Scotland ("RBS") appraisal had valued the royalties alone at about at about \$42 million. The royalties are about half the value of the music empire. [Appendix, p. 197-98]

In August 2011 Petitioner filed FOIA #1 and FOIA #2 in Newberry County.

Bauknight moved to intervene in both FOIA #1 and FOIA #2. Bauknight and the AG had both FOIA suits transferred to Richland County.

FOIA #1 is awaiting a hearing on consolidation with the Wingate Suit FOIA

⁵ On June 12, 2014 Petitioner learned that the AG claims he never saw the \$4.7 million appraisal which allegedly supported these false felony claims which are being continued by Bauknight as claimed agent for the AG. He relied solely on Bauknight.

⁶ The 2007 \$100 million offer was actually made to Buchanan's and Petitioner's predecessors, including Respondent Dallas.

#2 has been consolidated. The result: no FOIA compliance.⁷

On November 1, 2011 Bauknight, through counsel, told the Court that Tommie Rae's elective share claim was a "slam dunk." He said Tommie Rae and her son controlled the Federal Copyright Act termination rights.

In April 2012 Forlando's injunction suit against the 2000 Trust was dismissed. Counterclaims continue. Concealing the ROFR and estate share from

⁷ Petitioner asks the Court to take judicial notice of Newberry County Case No. 2012-CP-36-00688 where the AG and Bauknight seek to consolidate a FOIA suit by a Newberry journalist who began covering James Brown cases shortly after FOIA #1 was filed. The AG told the Court on June 11, 2014:

The signed Legacy Trust and Amendments

..we do not have nor have we ever had any copy or original Legacy Trust other than, as I noted in Court, the unsigned drafts.
[But See Appendix, p. 30 for Legacy Trust amendment of January 2011, signed by the Attorney General.]

Of Tommie Rae's widely-distributed and discussed writings, the AG said:

The Tommie Rae Hynie Brown diaries

The only issue about the Brown diaries pertinent to the instant suit is whether they are subject to disclosure. They are not. They are subject to an Aiken County Order referenced multiple times. That Order forbids dissemination of the diaries.

As to the \$4.7 million appraisal which the AG used as the basis of career-threatening felony claims against Buchanan and Petitioner, the AG said:

The \$4.7 million appraisal and related documents

Plaintiff complains that the OAG says it does not have the appraisal while referencing it in Court documents. The reference to the appraisal was based upon a representation of Russell Bauknight, a fiduciary. The OAG has never seen the appraisal and does not have it.

[Ltr. of Alan Wilson, AG, J. Emory Smith, Jr. Deputy Solicitor General, to Hon. Eugene C. Griffith, dtd. June 11, 2014, p. 2]

Terry, Forlando told the court he had no funds to pay the Trust's legal costs of his suit and no expectation from the Brown estate unless his father were deceased.

Bauknight knew Forlando owned the ROFR, but failed to tell the Court.

In July 2012 Bauknight paid Buchanan \$500,000 from Brown's estate to release Tommie Rae, the AGand others from his counterclaims in the Wingate Suit.

In late 2012 Bauknight paid Wingate \$560,000+, in addition to the 40% contingency. He did not disclose this until after the appointment order.

After July 2012, Bauknight and the AGdirected their attacks only at Petitioner, even though all acts of Buchanan and Petitioner were joint.

On February 27, 2013 the first *Wilson v. Dallas* opinion was issued. Footnote 29 of the opinion raised questions about the Wingate Suit and FOIA.

Footnote 29 was not in the substituted May 8, 2013 decision.

On May 12 Bauknight told the court in the Wingate Suit:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29 addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without clear definition ... the court no longer puts any primacy or priority on any court hearing these matters. [Emphasis supplied.]

Bauknight, still claiming to speak for the AGand Tommie Rae, asked to delay the FOIA suits and Wingate Suit until the conclusion of all Aiken County litigation. Tommie Rae's deposition had been noticed, a summary judgment that she was not Brown's wife was ready to be heard.

On May 29 Tommie Rae and Levenson announced their intention to

reinstate the 2008 settlement.

On July 29 Bauknight filed his petition seeking to be sole PR/Trustee.

On August 20, 2013 Bauknight was deposed in the Forlando Federal Suit.

Asked if Petitioner helped the estate by the *Wilson v. Dallas* appeal, he said:

That's poppycock. Pure speculation from your client. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic].

You don't know the value. . . She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with it. ...You know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....

...[Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent....Your client didn't even try. Your client didn't know the numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Emphasis supplied.] [Appendix, p. 119]

On September 4 Bauknight presented his petition to the circuit court. He was not asked about his failure to account for 18 months; his service as agent and fiduciary for Tommie Rae; his service to Levenson in the Wingate Suit; his attempts to intervene in three FOIA suits ; his service as trustee of the Attorney General's Legacy Trust; or his claim to speak for the State/AG.

Public documents Bauknight seeks to keep from FOIA disclosure include:

1. The Wingate Litigation Agreement;

2. The signed Legacy Trust, and amendments, [a Wingate Suit plaintiff];
3. The widely disseminated handwritten notes of Tommie Rae;
4. The \$4.7 million appraisal used to support the felony claims;

Had Bauknight accounted or filed the appraisal as required, the circuit court would have known about the \$560,000+ he paid to Wingate in 2012.

On September 23 attorney Marc Toberoff questioned the estate's agent's helping Tommie Rae file copyright termination notices when she is not the spouse and her son not a son. [Appendix, p. 206]

In an order filed October 3, 2013 the circuit court denigrated the service of Buchanan and Petitioner; praised, with no support in the record, the service of Bauknight and his attorneys; incorrectly found all Interested Persons had been noticed; failed to comply with the *Wilson v. Dallas* remand instructions; and took no note of Bauknight's troubling 4-year claim to speak for the Attorney General.

On October 8, 2013 the circuit court "double approved" Buchanan's \$500,000 payment, leaving open the possibility of voiding the Wingate Settlement.

On October 10, 2013 the probate court dispensed with any hearing and signed an *ex parte* order appointing Sojourner. [Appendix, p. 76]

On October 16, the *ex parte* order was hand delivered to one of Bauknight's attorneys for service on all Interested Persons. [Appendix, p. 82] It was not served on anyone.

Every act since October 2013 by Bauknight or his appointee has damaged the "I Feel Good" Trust; helped to destroy the "I Feel Good" Trust's

copyrights in favor of Tommie Rae; and helped defeat the interests of Petitioner; at least HALF of Brown's real heirs; and all others who seek to save the "I Feel Good" Trust from a second dismemberment.

Argument

- I. Dismissal of the appeal should be reversed because the Bauknight Appointment Order is final and appealable; Petitioner is aggrieved; and Petitioner has standing to appeal.**

Petitioner incorporates herein each argument contained in her appealability memorandum and supporting documents. [Appendix, pp. 39-66, 67-95] She supplements that as set out herein.

- a. The Appointment Order is Appealable Under Applicable Law.**

Under S.C. Code Section 14-3-330 appeals may be taken from:

... (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions...

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, ...

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas... continuing... an injunction...

The Bauknight Appointment Order and the form 4 order ("Orders") are immediately appealable for multiple reasons. They are final orders. They continue an injunction. They are without jurisdiction because Due Process was

violated. They have placed the property rights of Petitioner and others in immediate jeopardy. They make sweeping findings which have no support in law or the record. They praise Bauknight for violating public policy and the FOIA.

b. The Appointment Order is Final Despite its Title.

Section 62-3-107 of the SCPC states in pertinent part:

SECTION 62-3-107.

... (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.
[Emphasis supplied]

The relief sought by Bauknight has been granted. Bauknight has been given "full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business matters related thereto... Revisiting this authority "...upon the conclusion of all Estate litigation" means when everything is over.

The title does not define the order. It is final.

c. The Orders Determine Rights and Deny Due Process Rights

Article I, § 3 of the State Constitution provides:

The privileges and immunities of citizens of this State and the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.

The circuit court orders deny the State and Federal Due Process rights of Petitioner and all others who are not challenging Brown's estate plan. Both the procedure and the orders fail to meet even minimal standards of fairness. The summons and petition were not served. There was no proper notice. No

examination was allowed. The court ignored violations of FOIA and even Bauknight's improper claim to speak on behalf of the Attorney General.

The court's refusal to conduct a hearing or appoint a GAL for incarcerated son Michael was also manifestly unjust. Rule 17(c) SCRPC states:

(c) Minor or Incompetent Persons. .. A person imprisoned outside this State shall appear by guardian ad litem in an action by or against him; ...

The exclusion of Petitioner, Michael and others from the proceeding violated Equal Protection rights. The failure of the circuit court to allow exploration the \$4.7 million claimed value and FOIA interference, followed by an order which praised Bauknight and his lawyers, "involved the merits." and trampled on Probate Code and Due Process rights. The 2008 Gag Orders still violate First Amendment rights. The order finally determined substantial parts of causes of action or defenses. See *Neeltec Enter., Inc. v. Long*, 391 S.C. 177, 178, 705 S.E.2d 57, 58 (S.C.App. 2011).

The Orders are appealable because the Court made a final finding that Bauknight was qualified when he was not – damaging Petitioner, the "I Feel Good" Foundation, and real heirs. They are appealable because the circuit court, in its haste, has denied Petitioner and others Due Process, Equal Protection and First Amendment rights.

- d. **The Orders Finally Determine Rights of Petitioner, and other Heirs, Devisees and Interested Persons in a Proceeding Improperly Commenced Where No Summons or Petition was Served.**

Section 62-1-304 of the Probate Code in part says:

SECTION 62-1-304. South Carolina Rules of Civil Procedure govern formal proceedings.

The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court ...govern formal proceedings ... A formal proceeding is a "civil action" as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.

The purpose of the rule is to provide constitutionally adequate notice of the commencement of an action to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit. See *McLain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994) (*per curiam*). The required summons was never served. No action was commenced. The Court's jurisdiction over required parties was never obtained. Due Process was not met. Immediate appeal is appropriate.

The action purportedly commenced by Bauknight for the formal appointment was an action against Michael. Section 62-3-414 provides in part:

SECTION 62-3-414. Formal proceedings concerning appointment of personal representative.

(a) A formal proceeding for adjudication regarding the priority or....
..is governed by Section 62-3-402, as well as by this section. . .

(b) After service of the summons and petition to interested persons,
... the court shall determine...under Section 62-3-203...

The Bauknight Petition was also required to state:

...
(ii) . . .names and addresses of ... children, heirs ..known or ascertainable with reasonable diligence by the applicant...

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding ...[Emphasis supplied.]

The circuit court found these requirements were met when they were not.

Jurisdiction fails. Subject matter jurisdiction can be raised at any time and by any means. *Hammer v. Hammer*, 399 S.C. 100, 730 S.E.2d 874 (S.C.App. 2012).

e. The Right of Petitioner to Nominate Was Substantial.

In an extensive but incorrect analysis of Section §62-3-203, the court on pages 14 and 15 of the Order concludes that Bauknight has statutory priority to serve. He did not. Brown's Will deprives challengers of standing to nominate.

The circuit court incorrectly found that there was no Advisory Board. Gonzalez and Stanley have highest priority. Failing that, the Advisory Board has such authority. Under § 62-3-203(a), they are:

... (1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will.

Petitioner has higher priority as a creditor seeking alternate probate of the 1999 will to nominate than Bauknight to serve as an agent for will contestants.

f. The Incorrect Finding that All Interested Parties Were Notified is Material.

Page 14 of the October 1 Order, as a Conclusion of Law, finds:

All of the interested parties have been notified of the request for applications ... and have been given an opportunity to nominate a candidate and oppose the applications...

Section 62 -1- 201 (23) of the Probate Code defines Interested

Persons:

...(20) "Interested person" includes heirs, devisees, children, spouses, creditors, ..having a property right in or claim against a trust estate..which may be affected by the proceeding...

The finding regarding notice is a material incorrect error of fact and law.

g. Petitioner Has Standing to Appeal.

Petitioner has multiple bases for standing to participate in this case, including:

1. Petitioner is a Creditor. Petitioner has not been paid for six years.
2. Petitioner has Special Status Under §62-7-405. Petitioner has devoted time, effort and study to protect the "I Feel Good" Trust. The AG has withdrawn. The settlor is deceased. The trustee has irreconcilable conflicts. The 1999 will is in immediate jeopardy under the 10-year rule. This is the purpose for which Section 62-7-405 was intended.
3. Petitioner and Buchanan have Public Interest Standing. Saving \$91 million for scholarships from a second state takeover is a matter of public importance.
4. Petitioner has Counterclaims with Proposed Offset in the Wingate Tort Suit and the Forlando Federal Suit.

The facts set out above make clear that Petitioner is aggrieved. Her property, profession and even liability even liberty are at stake.

II. Bauknight's irreconcilable conflicts, including serving as agent for Tommie Rae, preclude his serving as PR or Trustee.

Bauknight cannot support Brown's estate plan and remain an agent for Tommie Rae and her son. Needed adjustment in estate tax proceeding are an example:

- A. Bauknight claimed Tommie Rae was the spouse. This damages the "I Feel Good" Trust's copyright in federal cases. corrected.
- B. Bauknight's claimed less than \$3 million going to the "I Feel Good" Trust – instead of the correct \$80 million – will distort the required payments to needy students under IRS guidelines.

The AG has recently stated correctly that no man is above the law.

Bauknight has acted above the law since May 2010. He has done so while

claiming to speak for the State's chief prosecutor, the public official charged with the enforcement of FOIA, and the public official charged with the protection of charities.

These and other issues prevent appointment.

III. The Court's appointment of one PR/Trustee violates *Wilson v. Dallas*.

a. Disregard for *Wilson v. Dallas* damages Petitioner and Threatens the "I Feel Good" Trust.

The circuit court order disregards *Wilson v. Dallas* with the finding that one trustee is appropriate. The record does not support this claimed efficiency.

Bauknight paid Wingate \$560,000+ in 2012. This was more than than the 5-year defense of the estate plan. In the last two months of 2013, Sojourner's firm was paid more than \$250,000 for fighting the heirs status of three DNA-proven and acknowledged daughters and an incarcerated son the AG didn't elect to include in his settlement. And Petitioner.

The facts are undisputed: The copyrights can and should be protected by confirming that Brown had no spouse and making copyright termination agreements with the most cooperative HALF (or half + 1) of Brown's heirs who are not challenging the estate plan. That probably means 5 or 6 of: Jeanette, the daughters of La Rhonda, Michael (incarcerated), Lisa, Nicole and Daryl. [Appendix, p. 129] It could also include, if they pass the Peeples DNA Protocol: Tommie Rae's son, granddaughter Tonya (father deceased), James Curtis or others. [Appendix, p. 129]

Bauknight and Sojourner are both working – at a rate of more than a

million dollars a year – to keep this from happening. And Bauknight is the agent for Tommie Rae and her son.

With knowledge that it is helping Tommie Rae and damaging the “I Feel Good” Foundation, both Bauknight and his agent are allowing Bell and Tommie Rae to siphon off the termination rights contracts the Estate should have had by 2011 with Michael and others. There is but one purpose for this: a second dismembering of the “I Feel Good” Foundation and a repeat of the same false claims about the value of Brown’s music empire, the heirs and the Federal Copyright Act.

Apparently to insure that they not support Brown’s noble estate plan, Bauknight is withholding their \$285,000 education funds of seven grandchildren until all litigation is complete – even though they need it now. And the circuit court is praising him this.

The proof that Tommie Rae is not Brown’s spouse is clear. It is now a matter of record through the admissions of all children, including DNA-proven children; all fiduciaries except Bauknight; and the so-called Hynie “diary.” Every party to this appeal knows the contents of the Hynie “diary” which was publicly discussed for months and properly disseminated by Wayne Byrd, Esquire, counsel for Respondent Dallas. But Bauknight has asked the Wingate Suit court to delay her deposition and summary judgment for what may be years.

b. Judicial notice, unsealing of \$4.7 million appraisal which served as the basis of false felony claims, and expansion of the record in light of the Attorney General’s June 12, 2014 statement that OAG has never seen \$4.7 million appraisal.

On June 12, 2014 Petitioner learned that the AG told the Court in one of the three FOIA cases in which Bauknight seeks to intervene and stop FOIA compliance that the AG ("OAG") had never had possession of a signed copy of the Legacy Trust or an amendment. Yet a copy of the 2011 Amendment signed by AG McMaster and distributed by Sr. Assistant Jones was already at pages 181 to 184 of the Appendix.

The AG also said that the OAG had never seen the \$4.7 million Bauknight appraisal used to accuse Buchanan and Petitioner of a federal felony and run them out of a position they were performing properly.

Forlando Brown's attorney recently told the federal court that the humiliation of the *Wilson v. Dallas* decision will be a permanent stain on Buchanan's and Petitioner's careers. That is true. To claim a \$5 million commission on a \$5 million estate would have been unfair.

But Brown's estate was not a \$5 million estate. It was a \$100 million estate. The misrepresentation to this Court was based either on a fabricated appraisal or false information provided by Bauknight. It should now come to light.

Under Rule 201(d) of the Rules of Evidence, Petitioner requests that this Court take judicial notice of the ROA in *Wilson v. Dallas*, the Wingate Suit, the Hynie "diary" appeal dismissed in 2013, and the three FOIA Suits. The Court is also asked to take judicial notice of the Aiken circuit court action since the *Wilson v. Dallas* decision, and the filings by Bauknight and Forlando since May 8, 2013 in Federal District Court Case No. 3:08-cv-00014-WOB-JGB.

Many false statements have been made. The facts about the \$4.7 million

appraisal alone show:

The first evidence of the extraordinary undervaluation came from a claim by AG Havird Jones in the summer of 2010. Jones told the *Wilson v. Dallas* Court that Bauknight had reviewed a draft appraisal showing Brown's assets at less than \$12 million.

[On August 30, 2010 Jones appeared as a "client" in a Wingate Suit hearing where Wingate discussed a 2007 \$100 million offer to buy the Brown assets. See Appendix, p. 122-124.]

The Jones/Bauknight revelation about the \$12 million prompted Smith and Pope to write their April 2011 *Private Foundations*. [Appendix, p 83.]

The following month, May 2011, the AG and Bauknight asked to supplement the ROA with \$4.7 million value.

The false felony claims began at the same time, and continue.

In September 2013 in the Forlando Case Bauknight said he had never shown the \$4.7 million appraisal to anyone. But Tommie Rae's son showed knowled of it in his Petition for Rehearing in 2013 in *Wilson v. Dallas*.

On June 12, 2013 the told Judge Griffith:

1. The AG never had a copy of the 2011 amendment to the Legacy Trust signed by McMaster. [Appendix, p. 181-184]
2. The AG had not seen a copy of the \$4.7 million appraisal.


These new revelations about the \$4.7 million and the continued work of Bauknight and his appointee to help Tommie Rae, merit reversal of the dismissal order and an expanded record, to include FOIA compliance.

CONCLUSION

The orders of the Court of Appeals dismissing the appeal should be reversed. The appeal should proceed with a complete record, including the unsealed \$4.7 million appraisal, Hynie "diary" and others documents withheld

through Bauknight's attempted FOIA interventions. The Court should find, without remand, that Bauknight's irreconcilable conflicts prevent his appointment and that of his appointee.

Respectfully submitted,



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June 13, 2014

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JUN 13 2014

S.C. Supreme Court

**STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

The Honorable Doyet A. Early, III Circuit Court Judge

Case No.2013-002582 (Order, S.C. Ct. App., filed May 22, 2004)

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is the.....Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas
and Tommie Rae Hynie are..... Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna
J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

APPENDIX

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S.C. Bar #4501
Petitioner, *pro se*

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JUN 17 2014

SC Court of Appeals

Exhibit H-2

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The South Carolina Court of Appeals

Alan Wilson, in his Capacity as Attorney General of
South Carolina: and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants,

Of whom Adele J. Pope, Individually and on behalf of
Others under South Carolina Trust Code Section 62-7-
405, is the Appellant,

And Terry Brown, Forlando Brown, James B., David G.
Cannon, Albert H. Dallas and Tommie Rae Hynie are
Respondents,

And Alan Wilson in his Capacity as Attorney General of
South Carolina, Deanna J. Brown Thomas and Robert L.
Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown and The James Brown
2000 Irrevocable Trust u/a/d August 1, 2000.

Appellate Case No. 2013-002582

ORDER

Appellant has filed a petition for rehearing from this Court's January 30, 2014 order, dismissing this appeal because Appellant lacked standing and the underlying order was not immediately appealable. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of

law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.¹

Paul E. Shortz, Jr. J.

John O. Seath J.

James M. Curston A. J.

Columbia, South Carolina

cc:

Adele J. Pope
Albert P. Shahid, Jr., Esquire
David B. Bell, Esquire
Matthew Day Bodman, Esquire
Eugene C. Covington, Jr., Esquire
Robert N. Rosen, Esquire
William W. Wilkins, Esquire
J. David Black, Esquire
Fred Lewis Kingsmore, Jr., Esquire
Burl F. Williams, Esquire
David G. Cannon

FILED
5/22/14

¹ Appellant has also filed a motion to hold this appeal in abeyance. Because the petition for rehearing is denied, this Court declines to act on the motion to hold this appeal in abeyance.

The South Carolina Court of Appeals

Alan Wilson, in his Capacity as Attorney General of
South Carolina, and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants,

Of whom Adele J. Pope, Individually and on behalf of
Others under South Carolina Trust Code Section 62-7-
405, is the Appellant,

And Terry Brown, Forlando Brown, James B., David G.
Cannon, Albert H. Dallas, and Tommie Rae Hynie are
Respondents,

And Alan Wilson in his Capacity as Attorney General of
South Carolina, Deanna J. Brown Thomas, and Robert L.
Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown and The James Brown
2000 Irrevocable Trust u/a/d August 1, 2000.

Appellate Case No. 2013-002582

ORDER

Appellant has filed a notice of appeal from an interim order of Judge Doyet A. Early III.¹ Because "[o]nly a *party aggrieved* by an order, judgment, sentence or

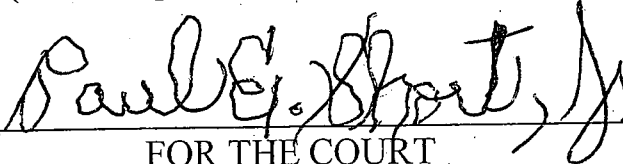
¹ The interim order appointed Russell L. Bauknight as the personal representative of the estate of James Brown and trustee of the James Brown August 1, 2000 irrevocable trust agreement. Additionally, the order appointed David C. Sojourner as the limited special trustee for the sole purpose of defending the trust in will and trust challenges. The order also established the temporary nature of the

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JUN 17 2014


SC Court of Appeals

decision may appeal" and an appeal may only be taken "as provided by law[] from final judgment, appealable order or decision," this appeal is dismissed. See Rule 201, SCACR (emphasis added); see also *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979) ("An appeal filed by one who has ceased to be a party to a suit is a mere nullity." (internal quotation marks and citation omitted)).


FOR THE COURT

Columbia, South Carolina

cc:
Adele J. Pope
Albert P. Shahid, Jr., Esquire
David B. Bell, Esquire
Matthew Day Bodman, Esquire
Eugene C. Covington, Jr., Esquire
Robert N. Rosen, Esquire
William W. Wilkins, Esquire
J. David Black, Esquire
Fred Lewis Kingsmore, Jr., Esquire
Burl F. Williams, Esquire
David G. Cannon

FILED
1/30/14 

appointments, stating fiduciary appointments would be revisited upon the conclusion of estate litigation.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-02-1647, 2009-CP-02-1810

In re: Estate of James Brown A/K/A James Joseph Brown

PLAINTIFF(S)

DEFENDANT(S)

| | |
|---------------|--|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
| | or |
| | <input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Adele J. Pope's Motion to Reconsider, Vacate, Alter or Amend Order Dated October 1, 2013 is DENIED. 10/25/13

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

Liz Hodard
 C.C.P.&G.S.
Anita Knoepfle / *ak*
 Deputy Clerk

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| | | \$ |
| | | \$ |
| | | \$ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

W. C. [Signature]

036
 Judge Code

10/23/13
 Date

For Clerk of Court Office Use Only

This judgment was entered on 10-25-13, and a copy mailed first class or placed in the appropriate attorney's box on 10-25-13, to attorneys of record or to parties (when appearing pro se) as follows:

Clyde H. Jones Jr. PO Box 11549 Columbia, SC 29211

Fred Lewis Kingsmore Jr. PO Drawer 2426 Columbia, SC 29202-2426

William George Newsome III PO Drawer 2426 Columbia, SC 29202-2426

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by edkncepl

Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 10-25-13, and a copy mailed first class or placed in the appropriate attorney's box on 10-25-13, to attorneys of record or to parties (when appearing pro se) as follows:

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
 William W. Wilkins PO Drawer 10648 Greenville, SC 29603-0648
 William Joseph Barr 108 N. Academy St. Kingstree, SC 29556-3422
 Robert N. Rosen 18 Broad St. Ste. 201 Charleston, SC 29401
 Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401
 Matthew Day Bodman 1500 Calhoun St. Columbia, SC 29201
 Louis Levenson 125 Broad St., SW Atlanta, GA 30303
 David Bell 619 Greene Street Augusta, GA 30901
 James Mixon Griffin PO Box 11208 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Skene

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

CASE NOS. 2008-CP-02-1647-*filed here*
2009-CP-02-1810
2007-ES-02-0056

IN RE:

**THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN**

INTERIM ORDER

~~FILED~~ 10-3-13
Liz Lockard
Anita Knoche 430
Deputy Clerk

This matter comes before me on applications for appointment filed by, or on behalf of, five individuals (hereinafter, the "Applicants") seeking appointment as Personal Representative of the Estate of James Brown (the "Estate") and Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust"). The Court has also received an application for appointment of Limited Special Administrator of the Estate and Limited Special Trustee of the Trust.

BACKGROUND

In *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013) (the "Opinion"), the South Carolina Supreme Court affirmed in part, reversed in part, and remanded this Court's May 26, 2009 Order confirming the James Brown Estate and Trust Settlement Agreement. The Opinion reversed the compromise agreement, affirmed this Court's May 26, 2009, removal of the prior fiduciaries Mrs. Pope and Mr. Buchanan, and vacated Mr. Bauknight's fiduciary appointments made in conjunction with the compromise agreement. The Supreme Court further remanded to this Court the question of who shall serve as fiduciaries of the Estate and Trust. In its Opinion, the Court instructed this Court, "upon proper application, [to] appoint fiduciaries to oversee . . . matters in accordance with the provisions for succession outlined in Brown's trust

JAE
#1

and estate documents.”

On May 29, 2013, this Court held a status conference concerning the Opinion and, by Order dated June 13, 2013, required all applications of those interested in serving as fiduciaries of the Estate and Trust to be made within 45 days of the date of that Order (July 29, 2013). Mr. Bauknight was ordered, in the interim, to continue to oversee the orderly administrative and fiduciary duties of the Estate and Trust as Special Administrator and Special Trustee, which he has done in a professional manner. Mr. Bauknight has continuously served in a fiduciary capacity for the Estate and Trust since May 26, 2009 and there has been no lapse in his authority or fiduciary service.

A. The Applicants

This Court received a total of six applications, each of varying form. The following identifies the Applicants and summarizes the form of the applications received:

- (1) **Mr. Russell L. Bauknight** – by Petition for Formal Appointment of Successor Personal Representative and Trustee filed with this Court on July 29, 2013 (attached as Exhibit 1)
- (2) **David C. Sojourner, Jr.** – by Petition for Formal Appointment as Limited Special Administrator filed with the Aiken County Probate Court and this Court on July 29, 2013, and Petition for Formal Appointment as Limited Special Trustee filed with this Court on July 29, 2013 (attached as Exhibits 2A and 2B)
- (3) **Judge Neal W. Dickert** – by letter of recommendation delivered on his behalf to this Court by David B. Bell on July 17, 2013 (attached as Exhibit 3)
- (4) **Mr. Scott Keniley** – by letter delivered to and filed with this Court on July 24, 2013 (attached as Exhibit 4)
- (5) **Dr. W.M. Grooms, CPA** – by letter filed with this Court on July 24, 2013 (attached as Exhibit 5)
- (6) **Rev. Larry Fryer** – by e-mail delivered on August 12, 2013 (attached as Exhibit 6).

WBC
#2

B. In Court Examination of the Applicants

On September 4, 2013, this Court conducted a hearing to receive testimony and answer questions posed by the Court from the Applicant parties. A transcript of the hearing is attached to this Order as Exhibit 7. All of the Applicants appeared at the September 4, 2013 hearing, except Rev. Fryer. On September 11, 2013, this Court reconvened the hearing to receive the testimony of Rev. Fryer. A transcript of that subsequent hearing is attached to this Order as Exhibit 8. At the conclusion of the September 4, 2013 hearing, this Court gave the Applicants ten (10) days to file written opposition to any of the Applicants.

FINDINGS OF FACT

As an initial matter, this Court wishes to express its gratitude to those Applicants who graciously volunteered to serve the Estate and Trust, as well as the State of South Carolina as a whole. Their willingness to assist the Estate and Trust in these matters is greatly appreciated by the Court.

As noted, the Supreme Court remanded the appointment of fiduciaries of the Estate and Trust to the sound discretion of this Court. This Court has carefully reviewed the Will and Trust, all applications and memoranda filed on behalf of, and in opposition to, the Applicants, and has considered the testimony provided by the Applicants. James Brown passed away nearly seven years ago on December 25, 2006. These factual findings and this Interim Order are made cognizant of the age of this matter and in an effort to expedite the efficient administration of the Estate and Trust. The overarching goal of this Court is to create an atmosphere where the prompt resolution of the various contested claims and a final resolution of Estate and Trust matters can occur without compromising the positive gains achieved since this Court issued its May 26, 2009 Order.

TOOTE
#3

Based on the foregoing, this Court finds:

1. Russell L. Bauknight has continuously served as a fiduciary to the Estate and Trust, both in his roles as Personal Representative and Trustee, and his continuing roles as Special Administrator and Special Trustee, with general fiduciary powers, since May 26, 2009. In that time, he and his counsel have protected the interests of the Estate and Trust in an effective and skillful manner, to wit:

(a) Notwithstanding the fact that he inherited the Estate on the verge of insolvency, with less than \$13,000 in the Estate's bank account, Mr. Bauknight oversaw the repayment of over \$14 Million on the Pullman bond debt seven years ahead of schedule.

(b) Mr. Bauknight engaged Mr. Peter Afterman to lead the marketing of intellectual property of the Estate. The Court notes that Mr. Afterman is a widely-respected Grammy Award winning music manager who also markets the music of the Rolling Stones. Mr. Afterman has been instrumental in marketing the intellectual property of the Estate. Mr. Bauknight hired Mr. Afterman on a deferred-pay basis so that he received payment 15 months after he began work for the Estate.

(c) Mr. Bauknight negotiated an arrangement with Universal Music to set up a fully-staffed division to assist in the marketing of Mr. Brown's music without charge to the Estate or Trust.

(d) Mr. Bauknight secured a deal launching the James Brown YouTube channel.

(e) Mr. Bauknight has recovered the domain name JamesBrown.com, which, prior to its recovery, had been held by an unrelated party for at least a decade. The Court understands that securing this domain name is part of a larger plan to market merchandise related to James Brown and otherwise promote the Estate's business interests and Mr. Brown's legacy. Mr. Bauknight convinced Universal Music to build the JamesBrown.com website without charge to the Estate or

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Trust.

(f) Mr. Bauknight secured a deal for a documentary on the life of James Brown, to be directed and produced by the world renowned musician and entertainer Mick Jagger. The Court understands that this project has already received funding of over two million dollars, which is extraordinary for a documentary.

(g) Mr. Bauknight secured a deal with *Imagine Pictures* (the production company of Ron Howard and Brian Grazer) and *Jagged Productions* (the production company of Mick Jagger) for the production of a movie on the life of James Brown, to be released in late 2014, directed by Tate Taylor, most recently of the movie, *The Help*, and starring Chadwick Boseman, most recently of the Jackie Robinson biopic, *42*.

(h) Mr. Bauknight is in the process of negotiating a live tribute tour featuring the music of James Brown.

(i) Mr. Bauknight engaged Mr. Steve Gibson at the Grand Ole Opry in Nashville, Tennessee, to lead the digitization of video and audio tapes of James Brown so that it can be preserved for commercial purposes. This project began over a year ago, and will preserve valuable audio and video tapes of James Brown that are in danger of deterioration.

(j) Mr. Bauknight has initiated discussions with a renowned Broadway producer for the creation of a Broadway production based on the music of James Brown.

(k) Mr. Bauknight has overseen and continues to oversee the repair and restoration of Mr. Brown's iconic Beech Island home and the remaining personal property in the home, which was in a state of disrepair and deterioration when Mr. Bauknight first began his fiduciary service to the Estate and Trust.

(l) Mr. Bauknight has negotiated a deal to restore Mr. Brown's remaining personal

Handwritten signature and initials, possibly 'JMB' and 'AS', in black ink.

possessions found in a state of disrepair at his Beech Island home.

(m) Mr. Bauknight has resolved most of the creditor's claims against the Estate and has worked diligently with his counsel to move the remaining claim matters forward in an efficient and expeditious manner.

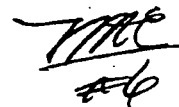
(n) Mr. Bauknight has resolved the Estate matters with the Internal Revenue Service and various state taxing authorities, and has filed all income tax returns for James Brown and the Estate and Trust for all periods, both during his tenure as Personal Representative and during the tenure of the prior fiduciaries, who failed to file any income tax returns.

(o) Mr. Bauknight has successfully resolved a number of IRS audits, including the audit of the estate tax return, which resulted in a refund due from the IRS to the Estate.

(p) Mr. Bauknight hired an investment banking firm on a deferred-pay basis to value the intellectual property of the Estate. The IRS royalty valuation experts examined the valuation report during the audit of the estate tax return and agreed with it.

(q) Mr. Bauknight has established a reserve to fund scholarships for deserving students under James Brown's charitable education trust and created a reserve to pay the educational expenses of Mr. Brown's grandchildren. These reserves have presently grown to over \$1 Million due to the foresight and planning of Mr. Bauknight, and those and future funds will be immediately available when the current litigation is concluded.

(r) Mr. Bauknight successfully terminated engagements for royalty audits entered into by the prior personal representatives, which were based on a 20% contingency fee arrangement, and negotiated more financially favorable fixed-fee arrangements with new royalty auditors. These new agreements will save the Estate approximately \$140,000 on the first audit and significant sums in the future.



(s) Mr. Bauknight has retained attorneys and accountants to represent the Estate and Trust on a deferred-pay basis, which has allowed the Estate and Trust to move forward with administration, while continuing to build and develop the capital required to administer an estate and trust of this size and complexity.

(t) Mr. Bauknight, through his professional contacts, retained other professionals necessary for administration on a deferred-pay or financially beneficial basis.

(u) Mr. Bauknight, in an effort to allow the Estate and Trust to meet all of its obligations and to provide reserves for scholarship funding, has agreed to defer his fiduciary fees and has not yet received any payment from the Estate and Trust for over four years of fiduciary service.

(v) Mr. Bauknight has overseen the successful review and approval of music clearances involving the commercial use of music, including a Super bowl commercial for Volkswagen using the song "*Get Up Offa That Thing*", a Chanel perfume commercial using the song "*It's a Man's Man's Man's World*", and multi-sport Gatorade commercials using the song "*Super Bad*."

(w) Mr. Bauknight and his representatives have successfully represented the Estate in the public arena in a professional manner, promoting James Brown's image and likeness, as well as the activities of the Estate through interviews and media opportunities.

2. When Mr. Bauknight was appointed to serve as Personal Representative there was less than \$13,000 in the Estate bank account and there was no consistent source of revenue to the Estate and Trust. Additionally, there were tens of thousands of dollars in bills due and owing as of the date of his appointment, and tens of millions of claims filed against the Estate. Since that time, Mr. Bauknight has assembled an outstanding team of advisors, attorneys, accountants, and other professionals to establish and secure sources of income, pay off debt, and settle claims, placing the Estate on solid financial footing. Additionally, those advisors and attorneys have

responded to both probate and non-probate claims against the Estate, in both state and federal court throughout the United States (the District Court of California, the Ninth Circuit Court of Appeals, the District Court of Illinois, and the Seventh Circuit Court of Appeals), and have successfully represented the Estate in a professional, efficient, and productive manner.

3. During the more than four years that he has overseen and managed the Estate and Trust, Mr. Bauknight has developed a unique and highly-specialized understanding of the business of the Estate and Trust, its litigation, revenue streams, and liabilities. Given the complexities of the Estate and Trust, there is a need for continuity in the knowledge base for all of the ongoing litigation and business of the Estate and Trust, and Mr. Bauknight and the team he has assembled provide that continuity.

4. The Estate is presently defending against \$10 Million in fee claims filed against it by the previous personal representatives. Adding more personal representatives and trustees, at this time, could detrimentally increase the personal representative and trustee fee burden to the Estate and Trust. The addition of more personal representatives and trustees (and their inevitable separate counsel) would require each to spend a significant amount of time to acquire the institutional knowledge that Mr. Bauknight has developed during his more than four years of service to the Estate and Trust.

5. This Court finds that Mr. Bauknight's significant fiduciary experience, including his prior professional administration of numerous estates and trusts, including a larger estate valued at over \$150 Million, uniquely qualifies him for the job of Personal Representative of the Estate and Trustee of the Trust.

6. The Court is mindful of the ongoing litigation being pursued by Messrs. Kendall Few and Jim Gilreath on behalf of the Estate against former professionals that James Brown

hired to help manage his music empire. Messrs. Few and Gilreath have already reached confidential settlements with certain defendants. The Court firmly believes that it is in the best interests of the Estate for that litigation to continue unimpeded. Mr. Bauknight has formed a positive working relationship with his counsel, understands and is deeply involved in the litigation. The Court is concerned that adding more personal representatives and trustees to manage the Estate and Trust (and its litigation) could increase the fiduciary fee burden (discussed above at Paragraph 4) and hamper, through multiple decision makers, the conduct of this litigation.

7. Respondents Deanna Brown Thomas, Yamma N. Brown, Vanisha Brown and Larry Brown are each devisees under the Will and each has nominated Mr. Bauknight to serve as Personal Representative of the Estate in their stead.

8. The Court is aware that certain Applicant parties have raised the issue of whether a conflict of interest exists with respect to Mr. Bauknight's continued role as fiduciary of the Estate and Trust in the ongoing spousal elective share matter, the omitted spouse matter, the omitted child matter, and the legal challenges to the validity of the will and trust that were involved in the settlement agreement (collectively, the "Will and Trust Challenges"). In reviewing the Applicant party challenges, it is important to pause and underscore that the Opinion unequivocally provided that Mr. Bauknight could be re-appointed as fiduciary. The Court does not believe that a conflict of interest exists. Mr. Bauknight was bound, as a fiduciary, to follow the prior settlement agreement. That settlement agreement has now been overturned. Accordingly, Mr. Bauknight has a fiduciary duty and must defend the Will and Trust against all challenges.

Mr. Bauknight has testified that he has no conflict of interest and that he is willing and

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capable of fully defending Mr. Brown's Estate plan. This Court has weighed that testimony and finds that neither Mr. Bauknight, nor his counsel, has any conflict of interest that would prevent them from vigorously defending or prosecuting actions on behalf of the Estate and Trust. Mr. Bauknight and his counsel have done an outstanding job prosecuting and defending dozens of legal actions throughout the past four and one-half years. This Court commends Mr. Bauknight and his counsel for the outstanding results they have obtained for the Estate and Trust.

While this Court finds that no conflict of interest exists, out of an abundance of caution and in order to avoid any appearance of impropriety, and to promote the efficient and speedy administration of the Estate and Trust, this Court finds that it is prudent to appoint an independent individual to serve as Limited Special Trustee and as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Trust and the Estate against the claims made in the Will and Trust Challenges.

9. David C. Sojourner, Jr. has been practicing in the area of estate and gift planning and probate administration for more than twenty-six years, and is certified as a specialist in estate planning and probate law and tax law by the South Carolina Supreme Court. Since 2001, Mr. Sojourner has been selected as a member of the American College of Trust and Estate Counsel, and has had specialty training in mediation of issues related to estates, including family disputes. Additionally, Mr. Sojourner has served as a fiduciary in the past and has counseled clients on their obligations and duties in a position as fiduciary. Mr. Sojourner has agreed to serve, so long as his role is limited to defending the Will and Trust Challenges on behalf of the Estate and Trust and his law firm of Adams and Reece LLP can represent him in that role. Given his experience, in addition to the resources of a 300-attorney law firm, Mr. Sojourner is well-suited to serve in the role as Limited Special Trustee and Limited Special Administrator.

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10. This Court appreciates the willingness of the Applicants who have offered to serve as Personal Representative of this Estate and commends them on their exemplary credentials. Specifically, this Court recognizes Judge Dickert's long and distinguished career both in civil practice and judicial service to the State of Georgia; Dr. Grooms' training as a Certified Public Accountant, in addition to his familiarity with bankruptcy issues and consistent service to the courts as expert witness in tax and accounting matters; Mr. Keniley's experience in the entertainment industry and familiarity with protection of intellectual property; and Rev. Fryer's longstanding service to the community both individually and as Pastor to Trinity C.M.E. Church.

11. This Court is mindful of the practical administrative problems the Estate and Trust have encountered as a result of the history of the prior and multiple fiduciary appointments. In an effort to avoid the recurrence of such problems, the Court finds that at this time, it is in the best interests of the Estate and Trust to leave Mr. Bauknight's appointments as Special Trustee and Special Administrator with general fiduciary authority undisturbed. Those appointments shall continue until further order of the Court.

12. The Court is mindful of the substantial claims, both satisfied and outstanding, of prior fiduciaries and their attorneys, accountants, and other advisors, as well as the fact that fees and commissions are still owed to the current fiduciary and his advisors. This Court is convinced that, given the extensive, complex and continuing litigation, including specifically the litigation involving allegations of fiduciary misconduct, the appointment of multiple fiduciaries at this time will inevitably involve the retention of multiple additional attorneys to advise the newly-appointed fiduciaries. I find that it is simply not practicable for the Estate and Trust to bear the additional cost and expense associated with multiple additional fiduciaries and their


#11

separate attorneys and other professional advisors at this important time. For these and other reasons this Court has noted, I find it is in the best interests of the Estate and Trust that a single fiduciary continue to administer and manage the business of the Estate and Trust until it is demonstrated that the Estate and Trust can satisfy the tremendous liabilities already created by the service of the many prior fiduciaries and their professional advisors.

13. The tumultuous history of the Estate and Trust and the litigation surrounding the same, juxtaposed to the list of Mr. Bauknight's accomplishments detailed above, leaves this Court with the firm factual conclusion that it is in the best interests of the Estate and Trust for Mr. Bauknight to serve, in the interim, as the sole Personal Representative and sole Trustee. The Court's factual conclusion is also driven by recognition of the considerable expense that the Estate and Trust will incur from the appointment of additional personal representatives and trustees, at this time. Moreover, the Court notes the need for consistent and streamlined administration of the Estate and Trust during this critical time frame.


14. Mr. Brown passed away nearly seven years ago. The Court uses the language—*this critical time frame*—because that is where the Estate and Trust find themselves. As detailed above, under Mr. Bauknight's leadership, the Estate and Trust are poised to launch a series of public events (the documentary, the life story movie, etc.) that should re-catapult James Brown and his musical legacy onto the world stage. These actions should have a tremendous positive impact to the Estate and Trust, both in terms of good will and financial gain. In turn, these actions should greatly benefit Mr. Brown's testamentary plan for scholarships for children in financial need through increased funding of the scholarship reserves.

Because the Estate and Trust are at a critical time frame, the Court is reluctant to interrupt these gains. Overlaying the Court's concern is the existence of the Will and Trust Challenges.

JDE
#12

Certain family members of James Brown are presently challenging the validity of the Will and Trust, and in doing so are, in part, challenging the validity of the requirement that three individuals serve as Personal Representative and Trustee. Since James Brown's death, the Estate and Trust have been overseen by only one set of three Personal Representatives and Trustees—Dallas (who sought to evade the jurisdiction of this Court by moving the situs of the Trust to Georgia and has since filed for bankruptcy), Cannon (who entered an *Alford* plea to felony indictments charging him with fraudulently taking over \$8 Million of James Brown's money), and Bradley (now deceased). Each of these men resigned from their positions, under a cloud, after information and documents were discovered that questioned the motive and faithfulness of their fiduciary service (these three fiduciaries also intended to charge Mr. Brown's Estate "administrative fees" up to 50% of the Estate's income). Because the Will and Trust are presently subject to litigation, I find that at this pivotal time, it is in the best interests of the Estate and Trust to maintain a single fiduciary to oversee the administration and management of the Estate and Trust. The Court underscores the point that this is an interim decision.

15. During this crucial time frame, the Court firmly believes that it is in the best interests of the Estate and Trust for Mr. Bauknight to continue to oversee the administration and management of the Estate and Trust, while Mr. Sojourner defends the Estate plan. Upon the conclusion of all Estate litigation, this Court will revisit this interim determination. Accordingly, I find that it is in the best interests of the Estate and Trust that, on an interim basis, Mr. Bauknight be appointed as the Personal Representative of the Estate and Trustee of the Trust, and that Mr. Sojourner be appointed as the Limited Special Trustee and Limited Special Administrator to oversee the Will and Trust Challenges. Mr. Sojourner is hereby ordered to draft and present a scheduling order to this Court within the next fourteen days setting forth proposed

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discovery, deposition, and dispositive motion deadlines so that the Will and Trust Challenges may be expeditiously set for trial.

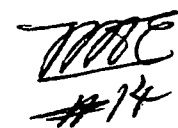
CONCLUSIONS OF LAW

1. I find that this Court has jurisdiction to hear this matter and that venue is proper. All of the interested parties have been notified of the request for applications to serve as Personal Representative of the Estate and Trustee of the Trust, and have been given an opportunity both to nominate a candidate and oppose the applications filed by the Applicants.

2. The Opinion, which is the law governing this case, requires this Court to, "upon proper application, appoint fiduciaries to oversee . . . matters in accordance with the provisions for succession outlined in Brown's trust and estate documents." *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013). Furthermore, this Court "may consider . . . whether [Mr.] Bauknight should be appointed to fill a fiduciary position." *Id.* at 449, 743 S.E.2d at 767.

3. The South Carolina Probate Code provides that in order to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person first must be appointed by order of the court. S.C. Code Ann. § 62-3-103 (1976). S.C. Code Ann. § 62-3-203(a) delineates the order of priority with respect to the appointment of a successor personal representative:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent regardless of whether the decedent died intestate and determined as if the decedent died intestate;
- (6) forty-five days after the death of the decedent, any creditor; and
- (7) four months after the death of the decedent, upon application by the South Carolina Department of Revenue, a person suitable to the court.



Unless a contrary intent is expressed in the will, subsection (a)(8) allows “a person with priority under subsection (a) [to] nominate another” person. That nominee “shall have the same priority as the person making the nomination.” *Id.* Additionally, although lack of priority is not a bar to appointment, according to S.C. Code Ann. § 62-3-203(d), before appointing one without priority, the Court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

In this case, subsection (a)(1) does not apply because the personal representatives named in the Will all have resigned and have not named successor personal representatives. Moreover, there is no “advisory board” currently in effect, as referenced in the Will and Trust. Subsection (a)(2) is inapplicable because, notwithstanding her claim to be surviving spouse, Tommie Rae Hynie Brown is not a devisee under the Will. Therefore, the highest priority of appointment rests with other devisees of the decedent under subsection (a)(3). Respondents Deanna Brown Thomas, Yamma N. Brown, Vanisha Brown and Larry Brown each are devisees under the Will, and each are allowed to nominate an individual to serve as Personal Representative of the Estate under subsection (a)(8). Because those devisees have nominated Mr. Bauknight for appointment, and there have been no other nominations by any other devisee, Mr. Bauknight has the highest priority under the terms of S.C. Code Ann. § 62-3-203. Because this Court is appointing the Applicant with the highest statutory priority for appointment as Personal Representative of the Estate, S.C. Code Ann. § 62-3-203(d) is inapplicable to the case at bar.

Based on the foregoing, I find and conclude that among all the applications filed in this matter, Mr. Bauknight has the highest statutory priority to serve as Personal Representative of the Estate under S.C. Code Ann. § 62-3-203.

JME
#15

4. S.C. Code Ann. § 62-3-414(a) outlines the fourteen requirements of a formal and proper application for appointment. According to that section, a petition must provide "(1) a description of the question relating to qualification of the personal representative which is to be resolved, and also must contain the statements required by S.C. Code Ann. § 62-3-301(a)(1). Those statements, which (2) *must be certified* by the applicant to be accurate and complete to the best of his knowledge and belief, S.C. Code Ann. § 62-3-301(a), may either be incorporated into the petition or adopted from a prior filing, and shall include: (3) A statement of the interest of the applicant; (4) Decedent's name; (5) Decedent's date of death; (6) Decedent's age; (7) Decedent's county and state of domicile at time of death; (8) Names and addresses of the spouse, children, heirs and devisees; (9) The ages of any children, heirs, or devisees who are minors so far as known or ascertainable with reasonable diligence; (10) A statement showing venue, if the decedent was not domiciled in the State at the time of his death; (11) A statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated; (12) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and (13) A statement that the time limit for appointment has not expired. S.C. Code Ann. § 62-3-301(a)(1).

Additionally, in 2010, S.C. Code Ann. § 62-3-414(b) was amended to clarify that *both* "a summons and petition are required to commence a formal proceeding, including a formal proceeding concerning appointment of a personal representative as referred to in [S.C. Code Ann. § 62-3-414]." South Carolina Reporter's Comments (2010 Revision), S.C. Code Ann. § 62-3-414. Thus, the applicant also must (14) serve the petition, *along with a summons*, on all

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interested persons, including all persons interested in the administration of the estate as successors, any previously appointed personal representative, and any person having or claiming priority for appointment as a personal representative. S.C. Code Ann. § 62-3-414(b).

The application filed by Mr. Dickert is defective because it was filed not by him, but by letter of recommendation from Mr. Bell. Therefore, it was not certified by Mr. Dickert to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-414(b). Additionally, while the application of Mr. Dickert did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, his application was not served, along with a summons, on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b).

The application filed by Mr. Grooms is defective because, while it did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, his application was not served, along with a summons, on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b). Additionally, it was not certified by Mr. Grooms to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-301(a). Finally, the application did not contain a description of the question relating to qualification of the personal representative which is to be resolved, as required by S.C. Code Ann. § 62-3-414(a).

The application filed by Mr. Keniley is defective because, while the application did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, although the application was served on this Court, it was not served along with a summons, on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b). Additionally, it was not

certified by Mr. Keniley to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-301(a). Finally, the application did not contain a description of the question relating to qualification of the personal representative which is to be resolved, as required by S.C. Code Ann. § 62-3-414(a).

Finally, the application filed by Rev. Fryer is defective because, while the application did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, the application was not served along with a summons on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b), but instead was e-mailed after the July 29, 2013 deadline set by this Court. Additionally, it was not certified by Rev. Fryer to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-301(a). Finally, the application did not contain a description of the question relating to qualification of the personal representative which is to be resolved, as required by S.C. Code Ann. § 62-3-414(a).

Based on the foregoing, I find and conclude that only Mr. Bauknight has met the statutory requirements of filing a "proper application" for appointment of Personal Representative of the Estate and Trustee of the Trust as required by the Opinion and this Court's June 13, 2013 Order.

5. Based upon the applications filed and testimony received in the hearings held on September 4 and 11, 2013, I find that no applicant for Personal Representative and Trustee had any previous experience serving as a fiduciary of any Estate or Trust, other than Mr. Bauknight and Mr. Grooms. In addition, no applicant other than Mr. Bauknight has experience serving as a fiduciary in any matter as complex as the James Brown Estate and Trust, or in any matter involving the music industry. Additionally, this Court takes note that Mr. Grooms has filed with

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#7/18

this Court, subsequent to his testimony, a letter supporting the appointment of Mr. Bauknight as Personal Representative and Trustee.

6. Based upon my nearly seven years of experience with these matters as they have appeared before this Court, and after careful review of the Will and Trust, all applications filed by the Applicants, the testimony proffered by all Applicants, and the party objections filed in opposition to the Applicants, I find, as a matter of law and fact, that it is in the best interests of the Estate and Trust at this time to appoint Russell L. Bauknight as Personal Representative of the Estate and Trustee of the Trust. Moreover, given the considerable expense to the Estate and Trust that the appointment at this time, of additional personal representatives and trustees would entail, as well as the need for consistent and streamlined administration of the Estate and Trust during this critical time frame, I find that it is in the best interests of the Estate and Trust to appoint Mr. Bauknight as the sole Personal Representative of the Estate and sole Trustee of the Trust on an interim basis. Mr. Bauknight is well-qualified and willing to serve in these fiduciary capacities. At this pivotal time, I find that to interrupt Mr. Bauknight's continuing professional administration of the Estate and Trust would not be in the best interests of the Estate, the Trust, or the beneficiaries and potential beneficiaries. I find that it is simply not practicable to appoint additional fiduciaries at this time when the Estate lacks the funds to pay the claims of prior fiduciaries and their legal counsel and is currently unable to pay the current fiduciary and his legal counsel. However, as noted above, this interim appointment will be revisited by this Court at the conclusion of all Estate litigation.

7. In addition, and in order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds that it is in the best interests of the Estate and Trust for Mr. David C. Sojourner, Jr. to be appointed as Limited Special

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Trustee and Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Trust and the Estate against the claims made in the Will and Trust Challenges until final resolution thereof. This interim appointment is made with the requirement that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight, shall act with sole and absolute authority in his limited capacity, and will retain Adams and Reese LLP to represent him in the Will and Trust Challenges.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Russell L. Bauknight is hereby appointed as the Personal Representative of the Estate and Trustee of the Trust effective immediately, with full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business and matters related thereto, and shall specifically have the authority and power to act on behalf of, and bind, the Estate and the Trust for all purposes, except as limited by the appointment of the Limited Special Trustee and Limited Special Administrator described below.

2. David C. Sojourner is appointed as Limited Special Trustee for the sole, exclusive, and specific purpose of defending the Trust in the Will and Trust Challenges, until final resolution thereof, and is authorized to retain Adams and Reese LLP to represent him in such matters.

3. Mr. Sojourner is ordered to draft and present a scheduling order to this Court within the next fourteen days setting forth proposed discovery, deposition, and dispositive motion deadlines so that the Will and Trust Challenges may be expeditiously set for trial.

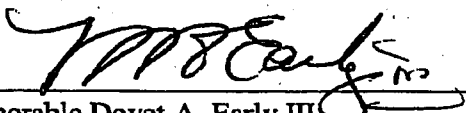
4. Mr. Bauknight's prior appointments as Special Trustee and Special Administrator, with general fiduciary authority, shall remain undisturbed until further order of the Court.

5. No bond is required to be posted in connection with these appointments.

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6. This Interim Order is temporary. The Court will revisit the appointment of fiduciaries upon the conclusion of all Estate litigation.

IT IS SO ORDERED.



The Honorable Doyet A. Early III

~~September~~ Oct 1, 2013.

Bamberg, South Carolina

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court**

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;**

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are.....Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are...Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

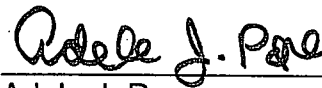
SUPPLEMENTAL NOTICE OF APPEAL

Appellant appeals the following additional Orders in the above matter:

1. Order of the Honorable Doyet A. Early, III dated October 1, 2013, received
2. Order of the Honorable Doyet A. Early, III dated October 25, 2013

Notice of the entry of the Order denying reconsideration was received by appellant on November 13, 2013 as shown on email attached to the Order.

A copy of each of said Orders is attached hereto and made part of this Notice of Appeal.



Adele J. Pope
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Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com

Appellant, *Pro Se*

December 5, 2013

Other Parties and Counsel of Record :

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The Honorable Alan Wilson
Attorney General of South Carolina
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Charleston, South Carolina 29401

David C. Sojourner, Jr., Esquire
Adams and Reese, LLP
1501 Main Street, 5th Floor
Columbia, South Carolina 29201

From: "Early, Doyet A. Law Clerk \ (Cassie M. Weathersbee)" <dearlylc@sccourts.org>
To: "Knoepfle, Anita;Knoepfle, Anita" <aknoepfle@aikencountysc.gov;aknoepfle@aikencountysc.gov>
Cc: ""Adele Pope" " <adele@popelawfirm.com>
Subject: Fwd: Denial of Motion for Reconsideration
Date: 11/13/2013 12:00:27 PM

Anita: See below. Please provide Ms. Pope with the below requested items. Thank you, Cassie Weathersbee Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO Box 90 Bamberg, SC 29003 Telephone: 803.245.4004 Fax: 803.245.2983 dearlylc@sccourts.org<mailto:dearlylc@sccourts.org> Begin forwarded message: From: "Early, Doyet A." <dearlyj@sccourts.org<mailto:dearlyj@sccourts.org>> Subject: Fwd: Denial of Motion for Reconsideration Date: November 13, 2013 11:56:03 AM EST To: "Early, Doyet A. Law Clerk (Cassie M. Weathersbee)" <dearlylc@sccourts.org<mailto:dearlylc@sccourts.org>> Sent from my iPad Begin forwarded message: From: Adele Pope <adele@popelawfirm.com<mailto:adele@popelawfirm.com>> Date: November 13, 2013 at 10:09:40 AM EST To: <dearlyj@sccourts.org<mailto:dearlyj@sccourts.org>> Cc: <fkingsmore@nexsenpruet.com<mailto:fkingsmore@nexsenpruet.com>>, <scott@k5law.com<mailto:scott@k5law.com>>, <"dsojourner@ellislawhome.comdearlylc<mailto:dsojourner@ellislawhome.comdearlylc>"@sccourt.org<http://sccourt.org/>> Subject: Denial of Motion for Reconsideration November 13, 2013 Dear Judge Early: I learned this morning that an order denying my motion related to the appointment of Mr. Bauknight and Mr. Sojourner was denied while I was out of the Country. I was also advised that the motion of Mr. Kenily was denied at about the same time. To date, I have not received notice or a copy of either. Could the Court kindly provide me with a copy of both, either by email or hard copy. Thank you, Adele Pope copies as shown .

From: "Knoepfle, Anita" <AKnoepfle@aikencountysc.gov>
To: "adele@popelawfirm.com" <adele@popelawfirm.com>
Subject:
Date: 11/13/2013 12:16:17 PM

Ms. Pope..please find attached a copy of the Form 4 order which was filed on 10.25.13.

Thanks,
Anita

From: "Early, Doyet A. Law Clerk \ (Cassie M. Weathersbee)" <dearlylc@sccourts.org>
To: "Knoepfle, Anita;Knoepfle, Anita" <aknoepfle@aikencountysc.gov;aknoepfle@aikencountysc.gov>
Cc: ""Adele Pope" " <adele@popelawfirm.com>
Subject: Fwd: Denial of Motion for Reconsideration
Date: 11/13/2013 12:00:27 PM

Anita: See below. Please provide Ms. Pope with the below requested items. Thank you, Cassie Weathersbee Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO Box 90 Bamberg, SC 29003 Telephone: 803.245.4004 Fax: 803.245.2983 dearlylc@sccourts.org<<mailto:dearlylc@sccourts.org>> Begin forwarded message: From: "Early, Doyet A." <dearlyj@sccourts.org<<mailto:dearlyj@sccourts.org>>> Subject: Fwd: Denial of Motion for Reconsideration Date: November 13, 2013 11:56:03 AM EST To: "Early, Doyet A. Law Clerk (Cassie M. Weathersbee)" <dearlylc@sccourts.org<<mailto:dearlylc@sccourts.org>>> Sent from my iPad Begin forwarded message: From: Adele Pope <adele@popelawfirm.com<<mailto:adele@popelawfirm.com>>> Date: November 13, 2013 at 10:09:40 AM EST To: <dearlyj@sccourts.org<<mailto:dearlyj@sccourts.org>>> Cc: <fkingsmore@nexsenpruet.com<<mailto:fkingsmore@nexsenpruet.com>>>, <scott@k5law.com<<mailto:scott@k5law.com>>>, <"dsojourner@ellislawhome.com[dearlylc](mailto:dearlylc@ellislawhome.com)<<mailto:dsojourner@ellislawhome.com>[dearlylc](mailto:dearlylc@ellislawhome.com)>"@sccourt.org<<http://sccourt.org/>>> Subject: Denial of Motion for Reconsideration November 13, 2013 Dear Judge Early: I learned this morning that an order denying my motion related to the appointment of Mr. Bauknight and Mr. Sojourner was denied while I was out of the Country. I was also advised that the motion of Mr. Kenily was denied at about the same time. To date, I have not received notice or a copy of either. Could the Court kindly provide me with a copy of both, either by email or hard copy. Thank you, Adele Pope copies as shown .

Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
803-413-0753

December 12, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

Re: Wilson and Others v. Dallas and Others, Adele J. Pope...Appellant
AND Terry Brown and Others, Respondents AND Alan Wilson and
Others Additional Interested Persons
Aiken County Case No. 2007-CP-02-0122; Case No. 2008-CP-02-
0872; Case No. 2008-CP-02-0322; Case No. 2010-CP-02-
0721; Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

This letter supplements my letter of yesterday responding to your letter of December 9 (copy enclosed). I wanted to make sure that Court Administration and all appropriate counsel and parties were aware of my communication.

Since the Case is being assigned a separate Appellate Case number, and not part of a pending appeal, I would appreciate some assistance with the date the Initial Brief is due and the proper caption.

The original summons, apparently with two petitions, was filed in the Aiken County Circuit Court on July 29, 2013. It references an Application/Petition for Successor Personal Representative and Trustee "in this action." The summons contains circuit court Case Numbers 2008-CP-02-1647 and 2009-CP-02-1810, as well as the General Probate Number of the Estate of James Brown, 2007-ES-02-0056.

The summons is directed to "ALL NECESSARY PARTIES" but does not name either plaintiffs or defendants. The accompanying petitions designate ALAN M. WILSON, in his capacity as the Attorney General of the State of South Carolina, with others, as the petitioners, but were generated by Fred L. Kingsmore, Esquire and others of Nexsen Pruet, LLC. Mr. Kingsmore and counsel do not designate their clients in the petitions, but have appeared for Russell L. Bauknight in other James Brown matters.

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So far as I can tell, there is no evidence of service of the summons and petitions on anyone within the record.

The October 1, 2013 circuit court order which is the subject of this appeal does not designate plaintiffs or defendants. It contains the same three case numbers as are shown in the summons.

The Clerk's Form 4 judgment entry related to the October 1 Order, filed October 3, designates the Plaintiff as Henry Dargan McMaster and Defendants as Daryl, Lindsey, Janise, Vanisha, Larry, Deanna, Jason, and Yamma Brown, with Sydney L. (a minor). It appears to have been circulated to the Office of Attorney General Wilson, Matthew D. Bodman, Esq., various member of Nexsen Pruet, LLC, William J. Barr, Esq., Robert Rosen, Esq., Louis Levenson, Esq., and David Bell, Esq.

The Form 4 Order of the Honorable Doyet A. Early, III, dated October 23, 2013, states that "Adele J. Pope's Motion to Reconsider, Vacate, Alter or Amend Order Dated October 1, 2013 is DENIED." The October 23 Order does not name Plaintiffs or Defendants. It deletes the Probate Court Estate Number from the caption.

The distribution list of the October 23 Order appears to be identical to the distribution list of the October 1 Order, but the name of James M. Griffin, Esquire, is noted on that Order. [It was stricken from the earlier distribution list.]

I wish to notify the Court that I learned this week from the public file that Mr. Griffin moved before the filing of my notice of appeal to be relieved as counsel to two daughters of James Brown – La Rhonda Pettit and Cinnamon Nicole Parris. Mr. Griffin asked the Court to issue an order granting them sufficient time to obtain new counsel.

So far as I know Mr. Griffin's motion has not been heard or ruled on.

Finally, when I requested and received a copy of the Orders on November 13, 2013, I also received a copy of the transcript of both hearings from the Clerk. For that reason, it appears that ordering a transcript is not necessary because I now have the transcript; it was provided to the above parties as indicated; and it is part of the public record.

I would appreciate the Court's guidance as to the following questions:

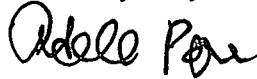
1. What is the correct caption for this appeal?
2. Particularly, should Mr. Bauknight and Mr. Sojourner be named?
3. Is my initial brief due 30 days from the December 6 filing, or at

Ltr. to The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
December 12, 2013
Page 3

a later time?

Thank you for your help.

Yours very truly,



Adele J. Pope
Appellant, *Pro Se*

Enclosure: Your letter of December 9, 2013

cc:

The Honorable Rosalyn W. Frierson, Director of Court Administration

The Honorable Alan Wilson

David C. Sojourner, Esq.

Fred L. Kingsmore, Esq.

Louis Levenson, Esq.

James M. Griffin, Esq.

William J. Barr, Esq.

David G. Cannon,

Eugene C. Covington, Esq.

Robert N. Rosen, Esq.

Peter Shahid, Jr., Esq.

Matthew D. Bodman, Esquire

David B. Bell, Esquire

Robert L. Buchanan, Jr., Esquire

Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
803-413-0753

December 13, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: Wilson and Others v. Dallas and Others,
Aiken County Case No. 2008-CP-02-1647 and others
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

I write with another question regarding the above case, and possibly another.

My initial brief and designation of matter to be included in the record on appeal ("ROA") will likely reference statements made on behalf of certain parties to the South Carolina Supreme Court in oral arguments in Case 2008-CP-02-1647. They may also contain references to oral arguments in appeals from Case 2007-CP-02-0122.

As I understand, the Supreme Court began publishing voice recordings of oral arguments fairly recently. The oral arguments I plan to cite occurred in 2011 or later.


I was advised by the Supreme Court Clerk's office yesterday that the Supreme Court does not publish transcripts of these voice recordings. I asked if a proper citation and inclusion in the ROA could be made by supplying counsel and the Court with a copy of the recording for the ROA and a citation approximately as follows:

Statement of John Doe, Counsel for Respondent Richard Roe,
Oral Argument, S. C. Sup. Ct., Monday, Day, 2011,
[Case citation], Min. 10 - 13.

The Clerk's office suggested that I direct my inquiry to you since the appeal for which I seek guidance is pending in the S. C. Court of Appeals.

Thank you very much for your help with this matter which is new to me.

Yours very truly,


Adele J. Pope

cc: Counsel and/or Parties of Record

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

The Honorable Doyet A. Early, III Circuit Court Judge

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No.2013-002582**

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

MEMORANDUM RELATED TO APPEALABILITY

For decades entertainer James Brown fought and sued and scrapped to amass his hundred million dollar fortune. For the last twenty years of his life his wish to leave that fortune to The James Brown "I Feel Good" Trust, his private foundation to provide scholarships for needy students, was Brown's widely known and often-stated desire.

For the seven years since Brown died on Christmas Day 2006 about 90 lawyers – ten paid by the taxpayers of South Carolina – and some clients have fought to see that those needy students do not get what Brown wanted them to have. Those seeking to benefit from a 2008 settlement which the S.C. Supreme Court declared void in the May 8, 2013 *Wilson v. Dallas*¹ decision include:

1. Tommie Rae Hynie ("Hynie"), who wants \$11+ million;
2. Hynie's attorneys, who want \$10+ million;
3. Louis Levenson, Esquire ("Levenson"), who wants \$9 million
4. David Bell, Esq. ("Bell") and Powell Goldstein ("PG"), who refuse to disclose what they want or have received;
5. Kenneth Wingate, Esq., who was paid \$563,000 in 2012 in a 2010 suit seeking damages from Appellant and Robert Buchanan, Jr. ("Buchanan") for conducting the *Wilson v. Dallas* appeal, and has a 40% contingency to serve Russell Bauknight ("Bauknight") as Hynie's agent and in other capacities.
6. Albert H. Dallas ("Dallas") wants \$6 million as a PR/Trustee commission.

For five years Appellant Buchanan as PR/Trustees, with a small group of lawyers, worked to carry out Brown's wishes. Their work included trying to stop the flood of incorrect representations to multiple courts about the 2008 settlement; the value of Brown's assets; Brown's heirs; and the Federal Copyright Act.

¹ *Wilson v. Dallas*, 743 S.E.2d 746 (S.C. 2013)

When they were replaced on May 26, 2009 Buchanan had a \$.5 million claim and Appellant a \$1.4 million claim for payment.² The claims were both allowed under the S. C. Probate Code ("Probate Code") and approved in an unappealed Order of the Honorable Doyet A. Early, III. The Order directed that they receive interest at the legal rate until the amounts were paid.

Two weeks before the August 10, 2008 settlement which became the subject of the *Wilson v. Dallas* appeal, Attorney General Henry McMaster ("AG McMaster") approved Buchanan and Appellant as permanent trustees of the "I Feel Good" Trust.

The legal cost of defending against the now-void 2008 Settlement which would have removed about \$50 million from the "I Feel Good" Trust (and damaged its royalties for decades by a false heirs "stipulation") for five years was about \$200,000.

James Richardson, Esquire, served *Pro Bono Publico* for four years as lead appellate counsel. James Bailey, Esquire, defended the Estate/2000 Trust against the settlement at the circuit court level for a year. Tressa Hayes, Esquire, while also briefing the Dallas and Cannon appeals, assisted Bailey in 7 days of hearings on the Settlement, and worked with Richardson on the appeal.

² The discrepancy related to Appellant's somewhat higher hours and much larger staff.

To avoid further litigation at the conclusion of the *Wilson v. Dallas* appeal, in July 2009 Buchanan & Appellant filed an extensive report and affidavit related to their service. For all of their work, no matter how long it took to conclude *Wilson v. Dallas* and the Will/Trust challenges, they proposed a PR/Trustee commission - which for Appellant would now be a cap if based on time - of: Buchanan: \$2.1 million; Appellant: \$2.8 million. It was based 2/3 on equal responsibility and 1/3 on time.

Buchanan and Appellant also filed their final accounting (subject to the appeal) in June 2009, showing just under \$100 million in assets delivered to Bauknight. Appellant spent about 80% of her professional time from November 2007 until May 8, 2013 on James Brown matters. Since May 8 she has offered, *pro bono publico*, to assist anyone who supports saving the "I Feel Good" Trust.

The team was efficient and dedicated.

The costs and commissions requested were within the Chart of "James Brown's Wishes in His 2000 Estate Plan" Buchanan and Appellant presented to Judge Early in March 2009 at hearing on the settlement:

\$7 million in administration and legal costs, including commissions;

\$2 Million for the 7 \$285,000 Education Trusts for certain grandchildren the Settlement destroyed;

\$77.5 Million (now \$91 Million) for "I Feel Good" Trust scholarships.³

Seven years after Brown's death \$91 million of Brown's fortune is now poised to distribute several million dollars in scholarships for needy students studying in South Carolina and Georgia each year.

A claimed justification for the 2008 Settlement was that the \$50 million taken from the "I Feel Good" Trust secured termination rights cooperation under the Federal Copyright Act. That cooperation could have been secured from non-settling parties for a fraction of that amount.

In 2009 the Estate/2000 Trust was poised to make fair Copyright Termination agreements with a cooperative half of Brown's real heirs who were not challenging the Estate Plan. This should have continued during the 4-year appeal.

³ When the Charts of "James Brown's Intentions" under the 2000 and 1999 Estate Plans were presented to the Court in March 2009, \$13.5 million was allocated to a debt to the NY Teachers ("TIAA") and \$77.5 million for "I Feel Good" scholarships for needy students. The TIAA Debt was originally \$26 million in 1999 and was paid down with Brown's major royalties. It was about \$15 million when Brown died; \$13.5 million in March 2009; \$11 million when Buchanan and Appellant were replaced; and paid off in late 2011. The former TIAA slice of the pie charts is now added to the \$77.5 million.

But in 2009 Bauknight aligned himself with Brown's grandson Forlando,⁴ Levenson and Hynie, Brown's companion, all of whom had worked since Brown's death to destroy the "I Feel Good" Trust.

Bauknight continued this alliance even after 2010 when son Daryl asked AG McMaster to abandon the appeal and Hynie – with all who had challenged the Estate Plan – confirmed that they had discussed Brown's estate plan with him during the years prior to his death and that the creation of the "I Feel Good" Trust was the long held and often-stated desire of James Brown. [See Record, Case 2010-CP-40-4900, Wingate Suit.]

The following is a brief overview of events::

| | |
|---------------|--|
| Dec. 25, 2006 | James Brown dies with no spouse and \$100 million fortune. Residue to "I Feel Good" Foundation for needy students. |
| Jan 8, 2007 | Forlando & others agree to pay Levenson 30% + \$150,000 To destroy "I Feel Good" Trust. |
| Dec. 26, 2007 | Levenson files suit for "Administration in Intestacy." |
| Jan. 2, 2008 | Forlando/Bell/PG file federal suit to enjoin 2000 Trust. |
| March 2008 | Judge Early orders that Heirs determination is appropriate <u>even though Brown has a valid 2000 Will and valid backup 1999 Will.</u> [Buchahan/Appellant support, to protect Royalty copyrights.] |
| July 30, 2008 | After thorough scrutiny, AG McMaster writes supporting Buchanan and Appellant as permanent trustees of |

⁴ Terry Brown and his son Forlando have worked as a team with Bell and PG since 2007, claiming to support the "I Feel Good" Trust but seeking both to dismantle it and acquire the music empire. Forlando sued the 2000 Trust in 2008 to enjoin it from taking any action until the Cannon trustees were reinstated. He claimed Buchanan & Appellant would favor Hynie & Levenson. He claimed they ousted the Cannon Group to get the \$5 million commission payable on Brown's \$100 million estate. [The Cannon Group were claiming \$15 million in PR/Trustee Commission.] In January 2011 Forlando acquired Terry's interest in the Estate. His name is used herein.

"I Feel Good" Trust.

- August 10, 2008** 2008 settlement: contract to replace Buchanan/Pope
1. Gives Hynie 25% and "stipulates" she was Brown wife.
 2. Gives Levenson clients 25%;
 3. Provides Settling Parties will work to defeat others.
- May 26, 2009** Order approves version of 2008 settlement. Jg.Early finds he has not heard claim for removal.
- Settlement destroys rights of real and DNA-proven Heirs, and those awaiting official Peoples DNA Protocol.
- (1) La Rhonda; (2) Nicole; (3) Jeanette; (4) Lisa (1st marriage);(5) Michael (incarcerated CA) (6) James Curtis; and (7+) Doe Defendants (being identified).
- May 19, 2010** Bauknight, as agent for Hynie, Hynie's son, Terry Brown & others, files Wingate Suit to stop *Wilson v. Dallas* appeal.
- 2011** While suing Buchanan/Appellant for tens of millions of dollars for not accepting \$100 Million offer in 2007 (made to PR/Trustee Dallas), Bauknight tells Supreme Court there was no such offer and music empire worth \$4.7 million.
- April 2011** Smith/Pope DRAFT article explains how false claims about Copyright Termination rights, false stipulation of heirs, and devaluation will destroy "I Feel Good" Trust. Explains how charities should "split heirs" to protect royalties.
- [SEE "Private Foundation, Copyright Heirs and Musical Millionaires: Why the James Brown 'I Feel Good' Trust doesn't.." [Draft 4/11, Aff.Ex.B]
- 2011 - 2012** Bauknight claims Buchanan/Pope intentionally overstated music empire to IRS by \$79 million to get \$5 million commission. Not True, but if so would be a felony under 26 U.S.C. § 7206.
- Bauknight says \$84 million value had no basis. Fails to inform Court that Valuation Formua for IP (Royalties & Publicity Rights) on Estate Tax Return presented to Jg.

Early, AG & others in motion and hearing November 15, 2007. No objections.

2011 Wingate/ Bauknight/Hynie move to intervene in 2 FOIA Suits to prevent release of public documents, including:

1. Bauknight's music empire appraisal
2. Wingate Litigation Retention Agreement

2011 - 2013 Bell takes opposite positions at same time for Terry/Forlando:

Bell for Terry

Hynie is Brown's spouse
Hynie's elective share is "slam dunk"
Hynie's son is a son of Brown

Music empire \$4.7 million
No offers
Should enforce 2008 Gag Orders to protect Hynie

Bell/ Forlando

Hynie is not Brown's spouse & knew it.
Hynie has no claim
Hynie's son is not. Impossible. Names reputed father.
Music Empire \$100 million
\$100 million offers (at least) available.
Discusses Hynie's "diary" in violation of Gag Orders.

2012 Bauknight/Wingate violate Shield law until AG Wilson asks them to withdraw subpoena for journalist's sources and notes.

May 18, 2012 Wingate/Bauknight - Questionable Buchanan "settlement"

2012 Bauknight/Wingate/Hynie seek to intervene in 3rd FOIA Suit (of journalist) to prevent release of public documents.

Nov., Dec. 2012 Bauknight – without notice to AG – pays Wingate \$563,000 to keep fighting deposition of Hynie, FOIA suits.

May 8, 2013 Final *Wilson v. Dallas* decision.

May 8 - Dec. 17, 2013 Bauknight procures at least four *ex parte* orders and presents *ex parte* ethics opinion to court;

Continues as agent for Hynie, Hynie's son and

Forlando/Terry in Wingate Suit.

Bauknight & Sojourner procure appointments without serving Summons and Petitions on anyone; No notice of hearing to most heirs, devisees & Interested parties. Appellant & Others who support 2000 and 1999 Estate Plans banned from participation by June 13 Orders.

Bauknight supports Forlando in Federal Suit.

Bauknight continues to interfere with FOIA rights in 3 FOIA suits.

| | |
|-------------------------|--|
| May 29, 2013 | Levenson and Hynie announce intention to re-do 2008 settlement |
| August 20, 2013 | Bauknight announces intention to re-do 2008 settlement. |
| October 1, 2013 | Bauknight/Sojourner appointments. Order not served on Appellant and most Interested Parties. |
| October 8, 2013 | Bauknight discloses \$563,000 Wingate payment. |
| October 10, 2013 | Ex Parte Jg. Roe Order appoints Sojourner. Hand delivered to Bauknight's counsel for mailing to Interested Parties. Not mailed to most. |

Based on the above facts and additional facts in the affidavit which is filed herewith as an appendix, and as set out below, the October 1, 2013 Order and denial of reconsideration are subject to an immediate appeal.

Argument

1. Applicable Law

Under S.C. Code Section 14-3-330 appeals may be taken from:

... (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final

judgments in such actions...

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, ... or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas... continuing... an injunction...

The Order of the Honorable Doyet A. Early, III dated October 1, 2013 and the subsequent order denying reconsideration which are the subject of this appeal are immediately appealable for multiple reasons. They are final orders. They continue an injunction in place since June 13, 2013 against most supporters of the two valid estate plans of James Brown. They prevent a judgment that the 1999 Will – not an intestacy – is the proper outcome in the unlikely event that Brown's 2000 Will and Trust are set aside. They make sweeping findings which determine pending actions. And they strike out pleadings which at least half of James Brown's heirs, devisees and beneficiaries were, through violation of their constitutional rights, not given notice or an opportunity to file.

2. The Appointment Order is Final Despite its Title

The Orders which are the subject of this appeal are final. The relief sought in the defective petitions which were not served on anyone prior to the hearing has been granted. Section 62-3-107 of the South Carolina Probate Code ("Probate Code") states in pertinent part:

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SECTION 62-3-107.

... (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment. [Emphasis supplied]

The relief sought has been granted. The appointments are final. Bauknight has been given " full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business matters related thereto..."

The "Court will revisit ...upon the conclusion of all Estate litigation" In other words: when everything is over.

An Order in a nearly-7-year old estate which appoints a fiduciary to serve until all estate litigation is concluded is as final as an order can be. The Probate Code provides that the proceeding commenced by Bauknight for the two appointments has been concluded "by an order making... the appointment." The October 1 Order is a final order. To title it "Interim" does not change the facts.

As a final order, it is appealable.

3. Orders Which Continue Judge Early's June 13 Injunction Against Appellant and Others are Immediately Appealable

Appellant has multiple bases for standing to participate in all James Brown cases now pending in Aiken County, including:

1. Appellant is a Creditor Appellant has not been paid for the six years she devoted about 80% of her professional time to protecting James Brown's Estate/2000 Trust and "I Feel Good" Trust, including her allowed and court-approved claim.
2. Appellant has Special Status Under §62-7-405. Appellant has devoted time, effort and study to protect the "I Feel Good" Trust. AG Wilson has withdrawn

from its protection. Bauknight has declared his intention to dismantle it – again. Appellant is qualified as an “Other” and willing to serve *pro bono publico*.

3. Appellant has a Counterclaim with Proposed Offset against Bauknight as agent for Terry, Hynie and others in the 2010 Wingate Suit brought by Bauknight.

The Wingate Suit counterclaims assert Hynie was not Brown's spouse and Appellant and Buchanan never owed her any duty. Appellant has a direct property interest in making sure the Aiken court does not reach a different conclusion in a hearing from which she has been banned from participation.

4. Appellant has a counterclaim in the Forlando Suit. Appellant and Buchanan have counterclaims for offset against the shares of Forlando in the 2000 Trust and the former share of Terry in the Estate which Forlando now owns.

5. In Case 2013-CP-02-1337. Bauknight, claiming authority under a pre-remittitur *ex parte* Order, served Appellant on May 29, 2013 with a Notice of Disallowance. Bauknight purported to disallow allowed and court-approved claims of Buchanan and Appellant and pending claims of Hayes and Bailey. The Disallowance was wholly unnecessary. It repeated the false claim that Appellant and Buchanan had improperly valued the assets with no basis. Under the Probate Code Appellant was forced to file suit, which she did.

Without notice or hearing, on June 13, 2013 Judge Early and the Honorable Liz Godard, Clerk of Court, issued three orders (the “June 13 Orders”). The June 13 Orders enjoined Buchanan, Appellant and others from participating in James Brown cases, and direct the Clerk of Court to remove Appellant's unheard motions from the public files. Judge Early also directed the Clerk not to accept filings by Appellant.

Article I, § 3 of the State Constitution provides:

The privileges and immunities of citizens of this State and the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.

The extraordinary injunction against Appellant and others, coupled with a direction that removes her filings from the public record and directs that she not be allowed to file documents when she is being sued by the Estate/2000 Trust through

Bauknight clearly deprives Appellant of property without due process of law.

The October 1 Order and denial of reconsideration continue that injunction.

Under Section 14-3-330 (4) they are immediately appealable.

4. The Orders Finally Determined Rights of Heirs, Devisees and Interested Persons in a Proceeding Improperly Commenced Where No Summons or Petition was Served.

The Orders which are the subject of this appeal finally determine the rights of Brown's heirs, devisees, beneficiaries under the 2000 Estate Plan, Beneficiaries under the 1999 Estate Plan and Others who want the "I Feel Good" Trust properly enforced and its \$91 million dollars dedicated to scholarships for needy students.

They did so without evidence that a single heir, devisee or Interested Person was served with the Summons and Petitions which purportedly commenced this now-final proceeding.

On July 29, 2013 Bauknight filed:

1. The Bauknight Application/Petition for Formal Apointment of a Successor Personal Representative and Trustee, with "Summons" described below. There are no named Plaintiffs or Defendants. Bauknight bases his "standing and priority" on "his status as a creditor of this Estate for proper fiduciary commissions and his status as the currently serving Special Administrator ...and Special Trustee."
2. The Bauknight Summons is directed to "All Necessary Parties." No parties are named. It lists the Circuit Court as the Court; contains two circuit court numbers: 2008-CP-02-1647 and 2009-CP-02-1810. It also contains the probate court number for Brown's estate.
3. The Sojourner SA Petition lists Attorney General Alan Wilson ("AG Wilson"), Daryl Brown, Deanna Thomas and others as Petitioners in the caption. Bauknight is, however, designated as the petitioner in the body. Among the named Petitioners are 4 adults – minors when their grandfather died – who have never been parties to any Aiken County Case. The Court cited is the Probate Court, but the filing is in the Circuit Court. Bauknight asks that Sojourner be

appointed Limited Special Administrator solely "for the limited purpose of defending the Estate against the claims made in the "1647 Cases", with specific authorization to retain his law firm to represent him. A footnote says:

The 1647 Cases consist of the Will and Trust challenges, the elective share matter, the omitted spouse matter, and the omitted child matter. Mr. Sojourner will have complete authority over, and be responsible for, these limited matters until final resolution of the listed matters.

An affidavit of Sojourner is attached, with a list of his qualifications.

4. The Sojourner ST Petition contains the same names of AG Wilson and others as petitioners; cites that it is (On Removal From Probate Court) Bauknight seeks appointment of Sojourner as limited ST over the same matters.

Section 62-1-304 of the Probate Code governs how these proceeding should have been commenced. It says:

SECTION 62-1-304. South Carolina Rules of Civil Procedure govern formal proceedings.

The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a "civil action" as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.

The purpose of the rule is to provide constitutionally adequate notice of the commencement of an action to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit. See *McLain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994) (*per curiam*) for a discussion of the importance of service of the summons in commencement of the proceeding.

Bauknight's petition attaches a summons and then ignores the service requirements of SCRCP. None of the Bauknight Summons and Petition or the

Sojourner Petitions appears to have been served on anyone. Basic Due Process was denied. The notice required under the Probate Code to all Heirs, Devisees and those who have demanded notice was disregarded.

Placing a required Summons on a Petition; directing it to all necessary parties; not even designating who those parties are; and then not serving either the summons or petition does not afford Due Process. It does not give the Court jurisdiction over the case.

The circuit court hearing was held just over a month after the Petitions were filed. There was a complete absence of Due Process by failure of service and failure of notice.

The rights of Heirs, devisees and Interested Persons as to the entire proceeding have been finally determined before they are even informed of the proceeding in a legally acceptable manner. Immediate appeal of the orders granting the relief requested in the non-served petitions is appropriate.

For this reason alone, immediate appeal is appropriate and reversal required.

5. The Numerous "findings" from the "hearing" Deny Due Process

As a result of the June 13 Orders, Judge Early refused to allow Appellant, Buchanan and Others who support the "I Feel Good" Trust to participate in the September 4 and September 11 hearings. Even those who "participated" were not allowed to ask any questions of Bauknight or Sojourner.

Due Process is denied where the Court conducts a "hearing" which is not a hearing. The constitutional right to due process contemplates a meaningful opportunity to be heard. That opportunity was denied when Appellant and others were barred from

participating and the Court refused even those allowed to attend the right to question Bauknight or Sojourner.

Due Process rights of Appellant, Brown's Heirs, Devisees and other Interested Parties were denied when the Court then Court simply adopted, without question or examination," the self-serving puffing – and misstatements – of Bauknight.

The damage was compounded when the October 1 Order was presented to Judge Roe without notice to anyone. In an October 10 *ex parte* order Judge Roe dispensed with a hearing; made extraordinary findings about the good works of Bauknight and his counsel; and appointed Sojourner Special Administrator. Then Bauknight's lawyer was handed a copy of the *ex parte* Judge Roe Order to mail to Interested Parties – which he did not do as to a majority of them.

The findings concluded a number of issues. They Orders sweepingly praised Bauknight and approved his simultaneous service as PR under a Will and agent for Hynie, Deanna Brown and others who are challenging the Will. The Orders, by not even noting that Bauknight had not accounted for 18 months, approved Bauknight's concealed 2012 \$563,000 payment to attorney Ken Wingate, Esquire. It approved Bauknight's favoring Hynie's son, who refuses DNA testing, over three heirs who have been DNA-proven and acknowledged under the Estate's official Peoples DNA Protocol. It approved Bauknight's refusal to allow DNA testing and a guardian *ad litem* for Michael Brown, incarcerated in California.

The October 1 Order then found that these heirs, devisees and beneficiaries and other interested persons had received proper notice of the proceeding– purporting to bind them.

The October 1 Order affected multiple substantial rights. It determines the action and prevents a judgment from which an appeal might be taken. The findings and conclusions are in large part inaccurate. As a single example, it is clear that Bauknight would have placed Hynie and her son – for whom he still serves as a fiduciary – in control of Brown's Copyright Act termination elections. Then, having conferred on Hynie a status to which she clearly was not entitled under the facts or law, he would have paid her nearly \$25 million of the "I Feel Good" Trust's assets to get it back.

On May 26, 2009 when Judge Early issued his Order approving the 2008 settlement, there was absolutely no impediment to Bauknight's continuing the official Peoples DNA Protocol for Michael, James Curtis and other Heirs excluded from the settlement.

While the appeal was pending, Bauknight could have secured – for as little as \$10,000 each per year and the recognition they deserved – indefinite Termination Rights cooperation from any 5 or so of :

1. LaRhonda; 2. Nicole; 3. Lisa; 4. Jeanette and - subject to passing the Peoples DNA Protocol which they requested - 5. Michael and 6. James Curtis; and possibly 7. Doe Defendants.

A dose of dignity and fair dealing with these real heirs – no matter what the outcome in *Wilson v. Dallas* – was both fair and the right thing to do for the "I Feel Good" Trust.

The Order's unbridled praise of Bauknight and his attorneys finally determines – with no basis – material issues about royalties and the rights of these real heirs of James Brown.

All of the "findings" damage and finally determine issues affecting Appellant's and Buchanan's property rights, those of the real heirs, and those of beneficiaries of the 2000 and 1999 estate plans who support James Brown's right to give his \$100 million fortune solely to education.

6. The Court's Appointment of One PR/Trustee Violates *Wilson v. Dallas*

The *Wilson v. Dallas* decision made clear that fiduciaries must be appointed in accordance with Brown's documents. Brown's Will and the 2000 Trust require three PRs and 3 Trustees. There is no basis for the Court's finding that

[t]he addition of more personal representatives and trustees (and their inevitable separate counsel) would require each to spend a significant amount of time to acquire institutional knowledge that Mr. Bauknight has developed during his more than four years of service to the Estate and Trust.

There are many reasons why this is not correct. Just one is that Appellant, since May 8, 2013, has offered to help *pro bono publico anyone*, including new trustees, working to protect the "I Feel Good" Trust and its Copyrights.

Another is that Levenson, Bell and counsel for Hynie – not the Plaintiffs – authorized the fabricated Wingate Suit. This was learned in the fall of 2013 after a federal judge directed release of the public Wingate Litigation Agreement which Wingate, Hynie and Bauknight had fought to conceal for years by FOIA intervention.

Hynie, Bell and Levenson wanted one thing: \$30 million or more of the \$100 million Brown gave for scholarships for needy students. Clients were forgotten. The "I Feel Good" Trust Bauknight claimed he was serving was forgotten. Most "Plaintiffs" in the Wingate Suit did not even know the suit was being filed. Lawyers, not Plaintiffs,

signed the Wingate 40% contingency contract.

Then Levenson, Bell and Hynie's lawyers sent Bauknight – who went in the name of the Estate/2000 Trust while serving Hynie – into three FOIA suits.

Two reasonable trustees might stop this outrage. Two reasonable trustees might say Wingate must disgorge the \$563,000 because he got it while in default as to counterclaims and caused his own problems by entering three FOIA suits for Plaintiffs he had never met.

The unsupported findings about propriety of Bauknight and his counsel are material and finally determine in Bauknight's favor – and to the detriment of the Estate/2000 Trust and Others who support it – that Bauknight and the Court may disregard the *Wilson v. Dallas* remand. For this reason, the orders are immediately appealable.

7. Bauknight's Securing of the void *ex parte* Jg. Roe Order and Other *Ex Parte* Actions Were Improper

Since May 8, 2013, Bauknight – committed to undoing the *Wilson v. Dallas* decision and still serving Hynie and her son – has obtained at least four *ex parte* orders. He has refused to share a secret ethics opinion of Professor Nathan Crystal he sent to Judge Early the night before a hearing in which Appellant was seeking reconsideration of the June 13 Orders. He has blatantly disregarded the basic requirement of fairness to heirs, devisees and beneficiaries.

Heirs and beneficiaries have reason to expect to be protected in the Probate Court. The extraordinary October 10 Order of the Honorable Sue H. Rose was procured by Bauknight with a Summons or Complaint not sent to anyone. It was

obtained without notice to a single interested person. It was obtained without a hearing. The extraordinary Order declares that no hearing was necessary. [See Aff. Ex. A] While the Court appointed Sojourner, the action appears to have been driven by Bauknight. The *ex parte* Judge Roe Order makes expansive findings about the propriety of Bauknight's action and those of his counsel.

After being issued on October 10, 2013 the *ex parte* Judge Roe Order was not mailed to Interested Persons. The Clerk's Notice of Mailing shows that it was hand delivered by the Clerk to Mr. Bauknight's lawyer to notify the Interested Parties of the Order. Most were not notified. Appellant discovered it in the records in mid-December 2013. Heirs Jeanette, La Rhonda and Nicole received no notice.

No "Other" who seeks to enforce the "I Feel Good" Trust, and no real heir, is safe, if actions such as these are allowed to continue.

The constitutional issues and Due Process violations of the October 1 Order were compounded as Judge Roe "adopted," with no basis and no hearing, the "findings" of Jg. Early's October 1 Order from a hearing that was not really a hearing.

These Orders, procured by a fiduciary of the "I Feel Good" Trust who has made public his intention to dismantle it, finally determine rights; deny basic Due Process; are immediately appealable; and should be vacated.

8. Due Process Violations and Refusal to Appoint a GAL for the Incarcerated Michael Brown are Immediately Appealable

Michael Brown has been incarcerated in California and seeking to be part of the James Brown proceedings for 6 years. He has asked for DNA testing. He was not made a party to Levenson's December 2007 suit seeking an "Administration in

Intestacy" despite Levenson's knowledge of Michael's support by Brown during minority and Michael's requests.

The Due Process violations as to all others are exacerbated by Bauknight's and Sojourner's attempts to prevent the appointment of a GAL for Michael. Rule 17(c) SCRPC is clear:

(c) Minor or Incompetent Persons. .. A person imprisoned outside this State shall appear by guardian ad litem in an action by or against him; .. [Emphasis supplied.]

Because Michael was both an heir seeking DNA confirmation and a person who had demanded notice, the actions purportedly commenced by Bauknight for the formal appointment of Bauknight and Sojourner was an action against Michael. Sections 62-3-414 provides in pertinent part:

SECTION 62-3-414. Formal proceedings concerning appointment of personal representative.

(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative.... if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 62-3-402, as well as by this section. . .

(b) After service of the summons and petition to interested persons, ... the court shall determine who is entitled to appointment under Section 62-3-203...SECTION 62-3-301. Informal probate or appointment proceedings; application; contents.

In addition, the Bauknight Petition was required to name Brown's heirs. The Petition was required to state:

...
(ii) . . .the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are

minors so far as known or ascertainable with reasonable diligence by the applicant...

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere;...[Emphasis supplied.]

Bauknight had actual notice that Michael was incarcerated in Folsom Prison in California. To emphasize how final and damaging this abuse of Michael's Due Process rights was, just days after his appointment to protect the estate plan Sojourner filed a motion to declared that Michael was not an heir. He asked the Court to make this determination without Michael's being served or made a party to any James Brown case despite 6 years of attempts.

Adding Michael and appointing a GAL for him was not just necessary. It was good for the "I Feel Good" Trust.

Bauknight's treatment of Michael is particularly egregious where Bauknight continues to serve in the Wingate Suit for Hynie's child, the only person claimed to have been fathered by Brown in the 22 years between Brown's vasectomy and his death. Hynie's child has refused DNA testing under the Peeples DNA Protocol for the same 6 years Michael, incarcerated, has been seeking it.

The purpose of Rule 4 SCRCF is to provide notice of the commencement of an action and "to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit, 295 N.C. 81, 243 S.E.2d 756, 758 [311 N.C. 542] (1978).

The intentional disregard for Michael and other heirs violated their fundamental constitutional and statutory rights, including Michael's right to be protected by a GAL. They are immediately appealable.

9. The Announced Plan of Bauknight to Dismember The "I Feel Good" Trust Again

Just 3 weeks after the *Wilson v. Dallas* decision Hynie's counsel and Levenson – having lost about \$19 million in fees by the decision, announced their intention to re-do the settlement. By August 20, 2013 Bauknight had joined the chorus, saying he was going to follow the "roadmap" the Supreme Court gave him to redo the settlement "to a T."

In the 6 months since the decision Bauknight has rushed to re-destroy the "I Feel Good" Trust, and the Courts have helped, including:

1. Two broad, pre-remittitur *ex parte* orders gave Bauknight broad authority, even to ratify his own acts, when he had not accounted for 18 months.
2. June 13 Orders of the Honorable Doyet A. Early, III ("Jg. Early") enjoin Appellant, Buchanan, former fiduciaries and other Interested Persons from questioning Bauknight.
3. Jg. Early, in June 13 Orders and his directions, stifles all criticism of Bauknight and all protection for the "I Feel Good" Trust.
4. The *ex parte* Judge Roe Order of October 10 is unprecedented.

These actions are both unusual and damaging to a charitable trust that is not being protected by the Attorney General. Because the only "Other" who is trying to protect it was banned from participation, Due Process again demands an immediate appeal.

10. The Right of Appellant and Others to Nominate Was Substantial.

In an extensive but incorrect analysis of Section §62-3-203, the court on pages 14 and 15 of the Order concludes that Bauknight has statutory priority to serve. The Court – by refusing to allow proper participation at the hearing -- failed to note that

Buchanan and Appellant, prior to their replacement, appointed former Warner Music executive Ray Gonzalez and distinguished attorney Ronald Stanley, Esq. as their successors. The nominations were filed of record prior to the May 26, 2009 Order.

In addition, on May 26, 2009 when the now-void settlement was approved, a distinguished Advisory Board existed. Within the records delivered to Bauknight but not revealed to the Court is correspondence from these carefully-selected and dedicated individuals. All opposed the 2008 settlement.

One of the Advisory Board, Dr. Leonard McIntyre, then Interim President of S. C. State University, was instrumental in helping protect thousand of items of James Brown memorabilia. S. C. State held a James Brown Exhibit at the Stanback Museum and Planetarium curated by director Ellen Zisholtz.

All of the above have the highest priority under § 62-3-2913(a), namely they are:

... (1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will.

The Court's findings violate the *Wilson v. Dallas* remand and should be reversed.

10. Refusing to Address the Less than \$4.7 Million Claim Violates Due Process

By banning Buchanan, Pope, Dallas and others from participating in the "hearing" held on September 4 and refusing to allow anyone to question Bauknight or Sojourner, the Court violated the Due Process rights of Appellant and all "Others" for whom Appellant speaks to know:

1. Will the "I Feel Good" Trust distribute several million dollars each year under the IRC 5% Rule or about \$200,000 according to Bauknight?
2. Does Bauknight's claim of a marital deduction as to Hynie in the Estate Tax Proceeding need to be corrected along with the claimed \$4.7 Million value of the music empire?

3. Does the Estate Tax Return need to be corrected to show the "I Feel Good" Trust got about \$82 million, and received a corresponding \$82 million Estate Tax deduction on the Estate Tax Return – not the less-than \$3 million as reported by Bauknight?
4. Did Buchanan and Pope commit a federal felony by valuing Brown's music empire at about \$84 million consistent with a court-approved formula and offers?
5. Or was the approximately \$100 million (less the TIAA Debt) value produced by the IP formula, every fiduciary other than Bauknight and most family members correct?
6. Isn't it true that it makes no sense to value a music empire that has had \$3 million in annual Royalties for a decade and earned \$18 million between 2003 and 2006 at less than \$4.7 million on December 25, 2006?
7. Isn't it true the the "appraisal" Bauknight has hidden since 2010 – and now asserts he did not even show to the S.C. Attorney General – should have been filed in the Probate Court?

Bauknight has fought bitterly for two years in federal court, 3 FOIA suits and the Wingate Suit to prevent anyone from seeking the "appraisal" he asserts will demonstrate that Buchanan and Appellant overstated Brown's music empire by \$79 million. He now claims that he did not even show it to the Attorney General. He claims it must remain under "lock and key." He ignores Section 62-3-708 of the Probate Code which says:

SECTION 62-3-708. Duty of personal representative; supplementary inventory.

If ... the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court, and furnish copies thereof or information thereof to persons who receive the original inventory, and to persons interested in the new information. [Emphasis supplied.]

Bauknight used a less-than \$4.7 million "appraisal" to accuse Buchanan and Appellant of a felony. He made the false claim that their \$84 million valuation claim had no basis. He did so with knowledge, as defined in the Trust Code, that the \$84 million was consistent with a court-presented valuation formula.

The failure of the Court to allow exploration of this critical area, followed by praise for Bauknight, "involved the merits." It finally determines some substantial part of some cause of action or defense in the case. See *Neeltec Enter., Inc. v. Long*, 391 S.C. 177, 178, 705 S.E.2d 57, 58 (S.C.App. 2011). The Orders are appealable because the Court made a final finding that Bauknight was qualified when he was not – damaging Appellant, the "I Feel Good" Trust and heirs.

11. Due Process and Thoughtful Protection of the "I Feel Good" Trust is the Overarching Goal

As the draft 2011 Article of Smith and Pope makes clear, protection of Brown's Royalties, which make up about \$50 million of the \$100 million music empire Brown gave to the "I Feel Good" Trust, will require a delicate and thoughtful balance over the next 4 - 7 decades. Brown's Royalties have consistently generated \$3 million or more per year for more than a decade. Added to revenue from exploitation of the Publicity Rights, they provide hope and promise for needy students for a century or more if properly managed.

Both the October 1 Order, and the *ex parte* Judge Roe Order discussed below – with no support either in the record or fact – declare:

The overarching goal of this Court is to create an atmosphere where the prompt resolution of the various contested claims and a final resolution of the Estate and Trust matters can occur without compromising the

positive gains achieved since this Court issued its May 26, 2009 Order.

When the October 1 Order was issued, Bauknight had not accounted for 18 months. When he did file an inadequate accounting for 2012 – days after the October 1 Order –it showed he had disbursed \$563,000 (in addition to a 40% contingency) to the Wingate Firm to continue his suit to derail the Wilson v. Dallas appeal and interfere with FOIA compliance.

Paying more than half a million for Wingate to protect Hynie; prevent her deposition and interfere with FOIA rights of S. C. citizens is not "positive." Rushing again to re-do a settlement which took \$50 million from the "I Feel Good" Trust is not positive. Denying the Due Process rights of the heirs from whom copyright termination cooperation can be acquired most efficiently, and who are not contesting the Estate Plan, is not positive.

The orders are appealable to correct these fundamental problems.

12. Failure to Notify Beneficiaries Whose Education Funds are Withheld By Bauknight Supports Immediate Appeal

Three now-adult beneficiaries of the 2000 Trust – Lindsey Brown, Janise Brown, and Jason Brown - have never been made parties to any James Brown Aiken case. Bauknight knew they were beneficiaries. As to Lindsey and Janise, Bauknight knew their father Daryl had fired Levenson and launched a campaign to save James Brown's estate plan. Bauknight knew Lindsey and Janise needed their \$285,000 education benefits, and their was no reason not to pay them .

Bauknight has refused to pay these education benefits. And Bauknight did not serve them with Petitions which materially and finally determine their right to ask the

Court to appoint a fiduciary who will follow Brown's Will and 2000 Trust and pay for their education.

The orders in this appeal are final and adverse to them. But they have not been given Due Process notice of the existence of the case or a right to protect themselves.

13. The Failure to Serve the Orders on Interested Persons Violated Due Process

The Due Process Rights of real heirs of James Brown have been repeatedly violated since May 8, 2013 in ways that may damage them and their children with respect to their rights as Brown's heirs under the Federal Copyright Act. And they don't even know it.

Appellant, an experienced probate practitioner, can barely ferret out the orders which Bauknight refuses to send. The October 25 Order denying Appellant's Motion to Alter or Amend was not provided until she saw it listed in public records. Appellant found the October 10 Judge Roe Order almost accidentally two months later on December 13, 2013.

In light of the June 13 Orders, immediate appeal is the only appropriate method to address these repeated Due Process and statutory violations.

14. The Incorrect Finding that All Interested Parties Were Notified is Material

Page 14 of the October 1 Order, as a Conclusion of Law, finds:

All of the interested parties have been notified of the request for applications to serve as Personal Representative of the Estate and Trustee of the Trust, and have been given an opportunity to nominate a candidate and oppose the applications filed by the Applicants.

Section 62 -1- 201 (20) of the Probate Code defines Interested Persons:

..(20) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

More than half of the Interested Persons entitled to be served, respond, and then be given notice of a hearing to determine whether Bauknight and Sojourner were appointed in accordance with James Brown's Will and 2000 Trust had no notice of the petitions and no opportunity to be heard. There is no basis for the material finding to the contrary in the Orders.

Conclusion

For the reasons set out herein, the Orders which are the subject of this appeal are immediately appealable and the appeal should proceed.

Respectfully submitted,

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December 17, 2013

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

The Honorable Doyet A. Early, III Circuit Court Judge

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No. 2013-002582**

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

AFFIDAVIT OF ADELE J. POPE IN SUPPORT

MEMORANDUM RELATED TO APPEALABILITY

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly sworn, deposes and says:

1. I am informed and believe that David C. Sojourner is one of the finest trust and estate lawyers in the state. I believe, however, that Mr. Sojourner has been placed in the same position Robert L. Buchanan, Jr. and I were placed in from August 12, 2008 until May 8, 2013:

A. Go along with Russell Bauknight, Tommie Rae Hynie, Forlando Brown and David Bell, Esquire; or

B. Face lawsuits, fabricated claims and humiliation.

2. James Richardson, Esquire served *pro bono publico* for four years to put the South Carolina Supreme Court in a position to restore \$50 million to The James Brown "I Feel Good" Trust. It did so on May 8, 2013.

3. Since May 8 I have dedicated almost all of my professional time *pro bono publico* to make sure the \$91 million now ready to be used for scholarships for needy students stay in the "I Feel Good" Trust.

4. I am informed and believe that I have special interest and expertise as an "Other" to enforce the "I Feel Good" Trust under S.C. Trust Code § 62-7-405 because:

a. The service is without pay and benefits the "I Feel Good" Trust.

b. AG Wilson has withdrawn from the James Brown Aiken cases and moved to be dropped as a party to the Richland County "Wingate Suit" where Russell Bauknight still serves as agent for Tommie Rae Hynie and her son.

c. Louis Levenson, Esq. announced on May 29, 2009 an intention

to reinstate the 2008 settlement which would pay him about \$9 million from the "I Feel Good" Trust. He did so even though all of his clients now admit that Brown wanted to establish the "I Feel Good" Trust.

d. Hynie's counsel announced on May 29 and intention to reinstate the 2008 settlement, which would have paid him about \$10 million from the "I Feel Good" Trust and Hynie \$11+ million.

e. Mr. Bauknight announced on August 20, 2013 his intention to reinstate the 2008 settlement.

f. James Brown's backup 1999 Will – which, like the 2000 Will, leaves Brown's entire music empire to the "I Feel Good" Trust – is in jeopardy of becoming void on December 25, 2016 under the S.C. Probate Code's 10-year rule and Mr. Bauknight is not protecting it.

5. I accept that the South Carolina Supreme Court, with incomplete information about our service, chose to replace Robert Buchanan, Jr. and me in the *Wilson v. Dallas* decision and make strong statements about us.

6. James Richardson, Esquire, who served *pro bono publico* for 4 years to protect the "I Feel Good" Trust, was never asked to – nor did he – raise a hand to protect Mr. Buchanan and me, individually in the appeal.

7. The job of our small team was to put the S.C. Supreme Court in a position to restore \$50 million to the "I Feel Good" Trust. Fortunately, it did so.

8. With Mr. Richardson's *pro bono publico* service as lead appellate counsel, the cost of 5 years of defense – including seven days of hearing in the circuit court – was about \$200,000.

9. I do not believe that the *Wilson v. Dallas* decision:

a. Deprives me of my rights under the S. C. Freedom of Information Act ("FOIA");

b. Deprives me of my rights to participate in all James Brown hearings

which threaten my property rights under my allowed and court-approved \$1.4 million claim, with interest at the legal rate since 2009,

- c. Deprives me of a right acting *pro bono publico*, to serve the "I Feel Good" Trust in any capacity other than trustee, including as an expert on Probate/Copyright issues and as an "Other" under S.C. Trust Code § 62-7-405 with both special interest and special knowledge.
- d. Deprives me of all customary rights accorded any creditor who has not been paid, as I have not been.
- e. Deprives me of my right to answer, counterclaim and obtain offset from Terry Brown, Hynie, or Mr. Bauknight as their agent, where they sued Mr. Buchanan and me in 2010 in Richland County (the "Wingate Suit") for tens of millions of dollars to stop the *Wilson v. Dallas* appeal.
- f. Deprives me of the right to urge the Aiken County Court to stay the Aiken proceedings and complete the Wingate Suit – where the issue of whether Hynie is Brown's spouse will be ready for a merits determination as soon as her deposition is concluded.
- g. Deprives Mr. Buchanan and me of our right to seek judgment and offset in the Federal Court against the Estate and 2000 Trust shares of Terry and Forlando Brown in the frivolous suit brought by David Bell, Esq. and Powell Goldstein ("PG") on January 2, 2008 to enjoin the 2000 Trust from taking any action until the Cannon Trustees were reinstated; and continued for 4 years until the Complaint was dismissed in 2012.
- h. Deprives Brown's real heirs – whose identity under the Peeples DNA Protocol is inexpensive to determine and beneficial to the "I Feel Good" Trust – and their children of their rights under S.C. Law or the Federal Copyright Act in the pending Levenson suit seeking an "Administration in Intestacy."
- i. Deprives these real heirs — and the "I Feel Good" Trust – of the right under the March 2008 Order of the Honorable Doyet A. Early, III, to proceed with an Heirs Determination even though James Brown had a valid 2000 Will and a valid backup 1999 Will.
- i. Allows Mr. Bauknight to ignore real heirs while serving as agent for the only person claiming to be a child of James Brown born in the 22 years between Brown's vasectomy and his death, who refuses DNA testing under the Estate's official Peeples DNA protocol.

k. Prevents Brown's son Michael, incarcerated in California and seeking DNA testing since 2007, from having a guardian *ad litem* ("GAL") and being made a necessary party to the Levenson Suit .

l. Precludes my *pro bono publico* service as GAL for Michael, James Curtis and the Doe Defendants, whose proper identification will help protect the "I Feel Good" Trust.

m. Precludes my protection of my own property interest, and those of the "I Feel Good" Trust under Orders issued without proper service, notice or hearing, including the October 1 Order now on appeal and the void (and undisclosed) *ex parte* October 10, 2013 Order of the Honorable Sue H. Roe, attached as Exhibit A. [This order was never served on most Interested Persons. I found it by accident last week.]

10. I am happy that I am in a position to serve *pro bono publico* for as long as it takes to help insure that needy students will enjoy the magnificent gift James Brown left to them.

11. I believe that I am fully qualified to do so, and have special knowledge.

12. My probate court experience and knowledge about James Brown's decades of music, with study, have allowed me to come to understand the relationship between State Probate Law and Federal Copyright Act Termination provisions which will be important in future decades for charities which hold royalties and other copyrights.

13. Academics claim, and I believe, that only a handful of entertainment attorneys – and few estate/trust attorneys – understand this emerging area of practice as it relates to the overlap of the two specialties.

14. As the attached draft article Jeffrey Smith and I circulated in April 2011 for review by professionals demonstrates, this is an important and emerging area of the law for private foundations. [Exhibit B]

15. Mr. Smith is the former president of the Clemson Philosophy Club; a music

enthusiast; a graduate of Georgetown Law Center; a former patent examiner; and a resident of my hometown of Newberry.

16. Out of respect for the Court, Mr. Smith and I did not finalize or officially publish "Private Foundations, ..." while the *Wilson v. Dallas* appeal was pending.

17. We did, however, file it in the Wingate Suit and Aiken County to help refute the unfounded claim that Mr. Buchanan and I had intentionally overstated the assets.

18. Right after the first *Wilson v. Dallas* decision in February 2013, I asked to meet with Attorney General Wilson, and he and his staff met with me.

19. While AG Wilson was very polite, he did not accept my suggestion to:

a. Quietly replace Mr. Bauknight;

b. Correct the \$4.7 million value and claimed Marital Deduction on the Estate Tax Return (which may impair scholarship distributions for years.)

c. Ask the Court to reinstate Mr. Buchanan and me, with Mr. Buchanan to resign immediately – as he wished to do.

d. According to our filed appointment of successors and the Will/2000 Trust, appoint Ronald Stanley, Esq., and former Warner Music Executive Ray Gonzalez. I would serve only until the Will challenges and Hynie claim ended.

e. If possible, a permanent family seat on the "I Feel Good" Foundation would be held, on a rotating basis, by descendant of James Brown.

20. While he did not adopt my suggestion, AG Wilson did call personally to tell me the State/AG was seeking to be dropped as a party to the Wingate Suit. He notified the S.C. Supreme Court of this.

21. I do not believe that there is any basis for AG Wilson to oppose an "Other" working *pro bono publico* to protect the "I Feel Good" private foundation where the Settlor is dead, the AG has withdrawn, the "Other" has special interest and expertise,

and the Trustee is openly committed to reinstating a settlement which will take \$50 million from the charity.

22. For two years Mr. Bauknight – purporting to speak for AG Wilson – accused Mr. Buchanan and me of intentionally overstating Brown's worldwide music empire by \$79 million for the improper purpose of obtaining a \$5 million PR/Trustee commission.

23. 18 U.S. C. §7206, as I read it, makes overstating the value on a sworn estate tax return by more than 15 times for an improper purpose a felony.

24. I believe I have the right to participate in any proceeding where this, and other, career-threatening false claims are made against me, or Mr. Bauknight is lauded for his proper handling of the Estate/2000 Trust. I was denied that right as to the Orders which are the subject of this appeal by Judge Early's June 13 Orders enjoining me from participating in the hearing and directing the Court not to accept any filings by me.

25. The Petitions resulting in the appointment orders – which orders made findings about the propriety of the service of both Mr. Bauknight and his counsel — were not served on any of the following:

a. Creditors Buchahan, Pope, Hayes, Bailey, Dallas

b. DNA-proven Heirs of James Brown acknowledged by the Estate/2000 Trust after the passed the Peoples DNA Protocol:

(1) La Rhonda; (2) Jeanette; (3) Nicole

c. Child of Brown's first marriage: (4) Lisa

d. Child of James Brown who has launched a national campaign to save the "I Feel Good" Trust:

(5) Daryl Brown;

e. Claimed children of James Brown requesting and awaiting DNA testing under the Peoples Dna Protocol who have not yet been been DNA tested or made parties to Case 2008-CP-02-0872 which requests an "Administration in Intestacy", even though Mr. Bauknight has known of their requests for years.

(6) Michael Deon Brown (Incarcerated in California); (7) James Curtis

- f. The Advisory Board of the James Brown 2000 Irrevocable Trust.
- g. Ronald Stanley, Esq. and Ray Gonzalez, Esq., the named successors in documents on file in Aiken County.
- h. Anyone to protect the 1999 Will in the unlikely event that the 2000 Will is set aside in the Levenson Suit.
- i. All "Others" who want to protect the "I Feel Good" Trust.

26. Mr. Buchanan and I, in our official capacity, offered the 1999 Will for alternate probate in the Levenson Suit. Ten years after Mr. Brown's death – on December 25, 2016 – the 1999 Will cannot be offered for probate unless someone continues to protect it under our filing.

27. The 1999 Will, like the 2000 Will, is one of four documents executed over 2 years that make Brown's estate plan ironclad.

28. In the June 13, 2013 Orders, subject to a separate appeal, Judge Early enjoined Mr. Buchanan and me from participation in actions which directly affect us; directed the Clerk to remove my unheard motions from the public records; and directed her not to accept future filings.

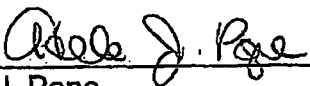
29. I believe that Judge Early's actions in those orders and in the hearing held on September 4 orders on appeal violate my Due Process Rights.

30. The Orders make a material incorrect finding that all Interested Persons had

proper notice. This is simply not the case. They did not even get the pleadings.


31. I believed that the Orders are immediately appealable because they are a final determination despite the title; they constitute an injunction; they were issued without Due Process based on Petitions that were never served; they involve the merits because unsupported findings about Bauknight and his counsel finally determine substantial parts of pending James Brown Aiken cases. They also finally place Brown's backup 1999 estate plan in permanent jeopardy under the 10-year rule and adversely and finally deny and determine some of the rights of Brown's real heirs, including an incarcerated one.

FURTHER DEPONENT SAYETH NOT.

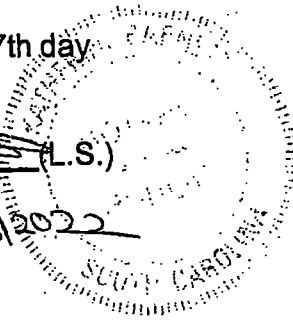


Adele J. Pope

SWORN TO BEFORE ME this 17th day
of December, 2013



(L.S.)
Notary Public for South Carolina
My commission expires: 10/23/2022



10.11.2013

Exhibit A

Liz Godard
C.C.P.&S.S. 300
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE PROBATE COURT

CASE NO. 2007-ES-02-005
CASE NO. 2008-CP-02-164

IN RE:

THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN

INTERIM ORDER
APPOINTING LIMITED
SPECIAL ADMINISTRATOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT
WITNESS MY HAND AND SEAL OF THE COURT THIS 10th
DAY OF OCTOBER A.D. 2013

Sue H. Rice
JUDGE OF PROBATE FOR AIKEN COUNTY S.C.
BY P. Lewis
CLERK

This matter comes before the Probate Court on Petition for the Appointment of Limited Special Administrator, whereby this Court is requested pursuant to applicable South Carolina law, including but not limited to S.C. Code Ann. § 62-3-614 and S.C. Code Ann. § 62-3-617, to appoint David C. Sojourner, Jr. as Limited Special Administrator of the Estate of James Brown (the "Estate"). Mr. Sojourner has been appointed by Order of the Aiken County Circuit Court dated October 1, 2013 (hereafter the "Circuit Court Order") as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust").

BACKGROUND

In *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013) (the "Opinion"), the South Carolina Supreme Court affirmed in part, reversed in part, and remanded the Circuit Court's May 26, 2009 Order regarding the Estate and Trust. On May 29, 2013, the Circuit Court held a status conference concerning the Opinion and, by Order dated June 13, 2013, required all applications of those interested in serving as fiduciaries of the Estate and Trust to be made within 45 days of the date of that Order (July 29, 2013). On September 4 and 11, 2013, the Circuit Court conducted a hearing to receive testimony from all applicants for fiduciary positions in the Estate and the Trust. Mr. Sojourner appeared at the September 4, 2013 hearing before the Circuit Court

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Filed: 10-10-2013
Sue H. Rice
Judge of Probate
By: P. Lewis

and provided testimony. Russell L. Bauknight, having filed the Petition of Appointment of Limited Special Administrator, also provided testimony at the September 4, 2013 hearing.

After conducting the hearing, the Circuit Court appointed Russell L. Bauknight as Personal Representative of the Estate and Trustee of the Trust by its Order dated October 1, 2013. The Circuit Court, by the same Order, appointed David C. Sojourner, Jr. as Limited Special Trustee of the Trust.

This Court takes Judicial Notice of the proceedings before the Circuit Court, as provided in the transcripts of record, along with the record of testimony, and hereby adopts and incorporates the findings and conclusions of the Circuit Court. All proper parties were provided the opportunity to object and be heard at the Circuit Court hearing. This Court incorporates the record of the Circuit Court hearing in this Order and relies thereon in order to further promote judicial economy and to avoid the cost and inefficiencies of conducting a second hearing with the same parties and the same issues.

FINDINGS OF FACT

This Court has carefully reviewed the Will, the Petition for Appointment of Limited Special Administrator filed on behalf of Mr. Sojourner, all related filings, and has considered the testimony provided by Mr. Sojourner, Mr. Bauknight and others in the hearing on September 4, 2013. James Brown passed away nearly seven years ago on December 25, 2006. These factual findings and this Interim Order are all made in an effort to expedite the efficient administration of the Estate, based on the overarching goal of creating an atmosphere in which a prompt resolution of the various contested claims and a final resolution of Estate matters can occur.

This Court incorporates and adopts the findings of fact of the Circuit Court's Order dated October 1, 2013, and specifically finds:

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1. Russell L. Bauknight has continuously served as a fiduciary to the Estate, both in his role as Personal Representative since May 26, 2009 and his continuing role as Special Administrator, with general fiduciary powers, since August 6, 2009, and there has been no lapse in his authority or fiduciary service since appointment.

2. This Court is aware that certain parties have raised the issue of whether a conflict of interest exists with respect to Mr. Bauknight's continued role as fiduciary of the Estate in the ongoing spousal elective share matter, the omitted spouse matter, the omitted child matter, and the legal challenges to the validity of the Will and Trust that were involved in the settlement agreement (collectively, the "Will and Trust Challenges"). This Court does not believe that a conflict of interest exists. Mr. Bauknight has testified that he has no conflict of interest and that he is willing and capable of fully defending Mr. Brown's Estate plan. This Court has weighed that testimony and finds along with the Circuit Court that neither Mr. Bauknight, nor his counsel, has any conflict of interest that would prevent them from vigorously defending or prosecuting actions on behalf of the Estate and Trust. While this Court finds that no conflict of interest exists, out of an abundance of caution and in order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds that it is prudent to appoint an individual to serve as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Estate against the claims made in the Will and Trust Challenges until final resolution thereof.

3. David C. Sojourner, Jr. has been practicing in the area of estate and gift planning and probate administration for more than twenty-six years, and is certified as a specialist in estate planning and probate law and in tax law by the South Carolina Supreme Court. Since 2001, Mr. Sojourner has been selected as a member of the American College of Trust and Estate Counsel.

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SMR

and has had specialty training in mediation of issues related to estates, including family disputes. Additionally, Mr. Sojourner has served as a fiduciary in the past and has counseled clients on their obligations and duties in a position as fiduciary. Mr. Sojourner has agreed to serve, so long as his role is limited to defending the Will and Trust Challenges on behalf of the Estate and his law firm of Adams and Reece LLP can represent him in that role. Given his experience, in addition to the resources of a 300-attorney law firm, Mr. Sojourner is well-suited to serve in the role as Limited Special Administrator.

4. Appointing a Limited Special Administrator to defend the Estate against the claims made in the Will and Trust Challenges provides structured and efficient administration, complies with sound judicial economy, and allows Mr. Bauknight the ability to manage all other aspects of estate administration.

5. At this time, this Court finds that it is in the best interests of the Estate, while Mr. Bauknight continues to serve as Personal Representative and oversees the Estate administration, that Mr. Sojourner be appointed as the Limited Special Administrator to oversee the Will and Trust Challenges and to defend the Estate plan against the claims made in the Will and Trust Challenges, and that he serve in such capacity until the conclusion of the litigation involved in the Will and Trust Challenges.

6. This Court is mindful of the practical administration problems the Estate has encountered as a result of the history of the prior and multiple fiduciary appointments. In an effort to avoid the recurrence of such problems, this Court finds, at this time, it in the best interests of the Estate to leave Mr. Bauknight's appointment as Special Administrator with general fiduciary authority undisturbed. That appointment shall continue until further order of the Court.

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CONCLUSIONS OF LAW

This Court incorporates and adopts the conclusions of law contained in the Circuit Court's Order dated October 1, 2013, and specifically concludes as follows:

1. I find that this Court has jurisdiction to hear this matter and that venue is proper. All of the interested parties have been notified of the Petition for Appointment of Limited Special Administrator of the Estate and have been given an opportunity to oppose the petition filed on behalf of Mr. Sojourner.

2. S.C. Code Ann. § 62-3-614 provides that a special administrator may be appointed upon a finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration. S.C. Code Ann. § 62-3-617 provides that a special administrator so appointed has the power of a general personal representative except as limited in the order and specifically states that the appointment may be for a specified time, to perform particular acts, or on any other terms as the court may direct.

3. After careful review of the Will and Trust, the Petition for Appointment of Limited Special Administrator, the testimony proffered by Mr. Sojourner and others in the hearing on September 4, 2013, I find that the appointment of a Limited Special Administrator of the Estate at this time is necessary in order to adequately protect and preserve the Estate, and secure the Estate's proper administration.

4. In order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds it in the best interests of the Estate for Mr. David C. Sojourner, Jr. to be appointed as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Estate against the claims made in the Will and Trust Challenges until final resolution thereof. This interim appointment is made with the requirement

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of 6
SMR

that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight, shall act with sole and absolute authority in his limited capacity, and will retain Adams and Reese LLP to represent him in the Will and Trust Challenges. Mr. Sojourner is well-qualified and willing to serve as Limited Special Administrator of the Estate.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. David C. Sojourner, Jr. is appointed as Limited Special Administrator for the Estate for the sole, exclusive, and specific purpose of defending the Estate in the Will and Trust Challenges, until final resolution thereof, and is authorized to retain Adams and Reese LLP to represent him in such matters.

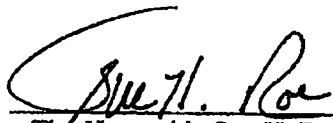
2. Russell L. Bauknight's prior appointment as Special Administrator, with general fiduciary authority, shall remain undisturbed until further order of the court.

3. No bond is required to be posted in connection with these appointments.

4. This interim Order is temporary. The Court's appointment of David C. Sojourner, Jr. as Limited Special Administrator will be revisited upon conclusion of all Estate litigation involved in the Will and Trust Challenges.

AND IT IS SO ORDERED.

October 10th, 2013.
Aiken, South Carolina



The Honorable Sue H. Roe
Aiken County Probate Judge

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of 6

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF AIKEN)

IN RE: THE ESTATE OF)
JAMES BROWN)

CASE NO.: 2007ES02-0056)
_____)

CERTIFICATE OF MAILING

I, Theodora Lewis, Clerk of Probate Court, certify that on the 16th day of October, 2013 a certified copy of the foregoing Order was hand delivered to the following attorney, to be served on all interested parties:

Fred L. Kingsmore, Esq.
Attorney at Law
P.O. Box 2426
Columbia, SC 29202-2426



THEODORA LEWIS

**Private Foundations, Copyright Heirs and Musical Millionaires:
or
Why The James Brown "I Feel Good" Trust doesn't...**

By Adele J. Pope and W. Jeffrey Smith¹

©²
2011

God has Smiled on Me³

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

¹ Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

² While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

³ The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody⁴

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.⁵

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."⁶

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

⁴ The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

⁵ AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

⁶ WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Wil; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Alose⁷

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back some of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs—in limited instances—may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves.⁸

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private

foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

⁷ (Give it up) Turn it Alose was published in 1969.

⁸ The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors⁹ must take at least take the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"¹⁰ to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.

7. As and when helpful, "split heirs"¹¹ to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until

⁹ Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

¹⁰ The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

¹¹ The heirs must act by majority. This allows foundations to "split heirs" — finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

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his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.¹²

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.¹³

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible

¹² Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
 - a. Nearly 40 songs from 1968.
 - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
 - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
 - d. "Hot pants", "Soul power" and others from 1971.
 - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full -- 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

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A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.¹⁴

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.¹⁵

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Mernickle (3).

¹⁴ Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

¹⁵ Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);¹⁶
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
 1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
 2. Then had a marriage ceremony with Brown although she was already married;
 3. Separated from Brown in 2003 when he discovered she was married;
 4. Obtained an annulment of her previous marriage in March 2004;
 5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets ¹⁷ and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

¹⁶ On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

¹⁷ Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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That changed on August 10, 2008.

"No, no, no, no (don't leave me this way)"¹⁸

On August 10, 2008 the AG's staff and some of the claimed heirs¹⁹ met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, all of whom had been specifically disinherited by Brown from his copyrights.
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.²⁰

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's

¹⁸ "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

¹⁹ The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

²⁰ According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation -- the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"²¹

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status--a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them -- not all properly-determined heirs over the duration of the copyrights -- were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This

²¹ This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.²² The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"²³

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.²⁴

²² In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

²³ The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

²⁴ Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.²⁵

Think (about it)²⁶

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations these private individuals.

proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus in early 2007 to raise \$200 million for the purchase of the James Brown assets.

²⁵ In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than \$60 million in 2010.

²⁶ The copyright to "Think (about it)" was issued in 1973.

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COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

| <u>Date of Publication/ Copyright</u> | <u>Description of Works</u> | <u>Earliest Possible Termination</u> |
|---|---|--|
| 1956 | About a dozen works, including "Please, please, please" | 2012 |
| 1957 | About six songs, including "Fine old foxy self" | 2013 |
| 1978 | About 30 songs | 2013 |
| 1958 | About 12 songs, including "Try me" | 2014 |
| 1979 | About 15 songs, including "Mother popcorn" | 2014 |
| 1959 | About 5 songs, including "Good good lovin' " | 2015 |
| 1980 | About 35 songs, including "Get up offa that thing" | 2015 |
| 1960 | About 8 songs, including "And I do what I want" | 2016 |
| 1981 | About 16 songs, including "God has Smiled on me" | 2016 |

J. David Black
Member
Business Litigation
Admitted in SC

December 23, 2013

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SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: *Wilson v. Dallas, et al.*,
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

The James Brown Estate and Trust submit this letter in response to the memorandum of appealability filed by Adele J. Pope ("Mrs. Pope"). Contrary to the assertions found in that memorandum, the subject appeal must be dismissed because: (1) Mrs. Pope does not have legal standing to pursue the appeal and has no legal interest in this matter. *Nance v. Nationwide Ins. Co.*, 273 S.C 617, 619, 258 S.E.2d 105, 1065 (1979) ("An appeal filed by one who has ceased to be a party to a suit is a mere nullity."); *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002) ("A party cannot appeal from a decision which does not affect his or her interest . . ."); and (2) the order is not appealable because it is temporary in nature, and none of the exceptions of S.C. Code. Ann. § 14-3-330 apply.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

I. Background

The order that is the subject of this appeal addresses the temporary appointment of fiduciaries to oversee the James Brown Estate and Trust (the "Appointment Order"). The Appointment Order follows directly from the Supreme Court's decision in *Dallas v. Wilson*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Appointment Order installed Russell L. Bauknight as the *interim* Personal Representative and Trustee of the James Brown Estate and Trust. The interim appointment will be revisited at the conclusion of the litigation over the validity of the Will and Trust documents. The Appointment Order also installed David C. Sojourner as the *interim* Special Administrator and Special Trustee, with authority to oversee

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the Estate and Trust's defense of claims challenging the validity of the Will and Trust documents. Both Messrs. Bauknight and Sojourner owe fiduciary duties to the Estate and Trust, and both have an unflinching obligation to zealously defend the estate plan crafted by the late James Brown. Messrs. Bauknight and Sojourner are not aligned with any of the parties seeking to invalidate James Brown's estate plan. To be very clear, Messrs. Bauknight and Sojourner are working, and are steadfastly committed, to uphold the late James Brown's estate plan against all challenges.

In her memorandum, Mrs. Pope complains that she was not involved in any of the below appointment proceedings; she generally argues that the failure to include her violates notions of due process. These arguments are meritless. Mrs. Pope was not involved in the below proceedings because she is not a party to any of the James Brown Estate and Trust matters. In *Dallas v. Wilson*, the Supreme Court unequivocally held that Mrs. Pope cannot be involved in any future Estate and Trust matters:

Appellants have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.

Dallas, 403 S.C. at 448-49, 743 S.E.2d at 766-67. Mrs. Pope was not involved in any of the below proceedings because the Supreme Court specifically held that she cannot be involved.

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A. Pope is the Only Individual Challenging the Orders

There is a split among James Brown's heirs as to whether the estate plan was validly enacted, or fraudulently procured. Notwithstanding those divergent views (held by heirs actively involved in these proceedings), it is instructive that not one of James Brown's heirs is challenging any of the subject orders of the circuit court. It is also instructive that Mrs. Pope *does not* represent any heirs. She represents *herself*. And she does not have any legal interest in the future of the Estate and Trust.¹

In its opinion, the Supreme Court noted some of the faithless actions that supported Mrs. Pope's for-cause removal as a fiduciary. It is important to note that those actions, and others, served as a foundation for the breach of fiduciary duty civil action filed against Mrs. Pope by her successor and some of James Brown's heirs. That action was filed in 2010 because some of the factual bases for the claims fell within the trust code's one-year statute of limitations. S.C. Code Ann. § 62-7-1005. That statute provides that a party has one year following receipt of a "report that adequately disclosed the existence of a potential claim." § 62-7-1005(a). Mrs. Pope's assertion that the 2010 breach of fiduciary duty action was filed for the purpose of having her abandon the *Wilson v. Dallas* appeal is meritless. The action was filed because Mrs. Pope committed serious breaches of her fiduciary duties, and those actions damaged the Estate and Trust.

B. Mrs. Pope Seeks to Create a False Narrative

Messrs. Bauknight and Sojourner are vigorously defending the estate plan created by the late James Brown. Notwithstanding that undeniable fact, Mrs. Pope (a member of the South Carolina Bar) actually writes that Mr. Bauknight "has declared his intention to dismantle it [*i.e.*, the estate plan]." (Memorandum, p. 11). She does not provide any citation or proof or evidence for that statement—and she cannot, because the statement is false. Mrs. Pope also writes that, "[b]y August 20, 2013, Bauknight had joined the chorus, saying he was going to follow the 'roadmap' the

¹ Mrs. Pope has a creditor's claim for her share of the nearly \$5 million fee that she filed against the Estate after her removal in 2009. That case is pending in the Aiken County Circuit Court, and it is the only James Brown related case in which Mrs. Pope has any legal interest.

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Supreme Court gave him to redo the settlement 'to a T.'" (Memorandum, p.22). That is also a false statement. The "roadmap" language comes from the August 20, 2013 deposition of Mr. Bauknight.² In that deposition he testified as follows:

Q. When you say defend the estate and trust, do you mean to defend the documents that constitute the 2000 will and trust of James Brown as written?

A. Yes. That's my job. That is my job. Frankly, I served -- until the Supreme Court ruled otherwise, I served under the settlement agreement because that was the law of this case. This -- Judge Early said that was the proper roadmap. I served under that roadmap. I followed that roadmap. That roadmap has been torn up by the Supreme Court. Not a problem in the world for me. I've got a new roadmap to follow and I will follow that roadmap and I will do it to the best of my ability. This is the -- this is my job and I take it very seriously. There's no one more independent when it comes to this than I am. I'm straight down the line and I will defend it vigorously.

....

I've got a new roadmap, and I'm going to follow this new roadmap to a T.

(Bauknight Deposition, p. 100 ln. 12- p.101 ln. 5; p. 105 ln.15-17) Mrs. Pope's representation to this Court is false.

² The deposition was taken in *Brown v. Pope*, 3:08-CV-0014 (D.S.C.), which is pending in the South Carolina District Court. That case was filed on January 2, 2008 by one of James Brown's grandsons (Forlando) to restrain Mrs. Pope from acting as the Trustee. Forlando ultimately dropped his claims against Mrs. Pope but the case is still pending because she filed a number of counterclaims against Forlando Brown, generally alleging that the action was instituted for ulterior purposes. Mr. Bauknight was first appointed as PR/Trustee on May 26, 2009, and was not a witness to any of the events surrounding the lawsuit. Nevertheless, Mrs. Pope subpoenaed Mr. Bauknight to appear for a deposition in that case.

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Mrs. Pope seeks to convince anyone who will listen, that no one but her is interested in protecting the Estate and Trust. Those words, however, do not jibe with the factual findings that the circuit court made in the Appointment Order. In that order, which Mrs. Pope is attempting to appeal, the circuit court praised Mr. Bauknight's service and articulated specific examples of his positive work. The circuit court provided that praise so that a reviewing court would have the benefit of those factual findings when confronted with the "writings" of Mrs. Pope.

Mrs. Pope suffers from an inability to accept the fact of her fiduciary lapses. The Supreme Court detailed some of her faithless actions and noted also that "the extreme discord between the parties convince[d] [the Court] that [Mrs. Pope's] continued service as [a] fiduciary[y] is not in the best interests of the estate." *Dallas*, 403 S.C. at 449, 743 S.E.2d at 767. Mrs. Pope's refusal to comply with the Supreme Court's mandate flows from her inability to accept the fact of her past conduct and is driven by her selfish desire to rewrite history. Her selfish motives are needlessly wasting Estate and Trust resources.

II. The Orders are Not Appealable

A. No Injunction Exists

In an effort to manufacture an appellate issue, Mrs. Pope asserts that the circuit court issued an injunction against her through the administrative orders that were entered following the *Wilson v. Dallas* decision. (The administrative orders are the subject of a separate appeal: Appellate Case No. 2013-001649.) Mrs. Pope writes that the Appointment Order "continue[s] an injunction in place since June 13, 2013 [the administrative orders] against most supporters of the two valid estate plans of James Brown." (Memorandum, p.9).

The administrative orders are not before the Court in this appeal. Nevertheless, it is critical to clarify that those orders do not contain injunctions; the orders effectuate the Supreme Court's decision, which among other things, mandated that Mrs. Pope cannot be involved in future James Brown Estate and Trust proceedings. Moreover, the administrative orders do not prevent "supporters of the two valid estate plans of James Brown" from defending the Estate and Trust. As discussed above, both Messrs. Bauknight and Sojourner are actively defending James Brown's estate plan. Mrs. Pope's "writings" to the contrary are incorrect.

Exhibit A
[Emphasis Supplied]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-4900

Russell Bauknight, et al.,)
)
Plaintiffs,)
)
vs.) TRANSCRIPT OF RECORD
)
Henry Dargan McMaster, et al.,)
)
Defendants.)

August 30, 2010
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

KENNETH B. WINGATE, ESQUIRE
EVERETT A. KENDALL, II, ESQUIRE
Attorneys for Plaintiffs

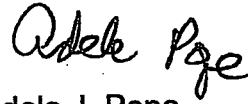
DARYL L. WILLIAMS, ESQUIRE
J. CALHOUN WATSON, ESQUIRE
Attorneys for the Defendants

Crystal Holmes

Conclusion

The Orders which are the subject of this appeal continue, without Due Process, the injunction begun June 13, 2013. They threaten to dismember -- again -- what should be the State's largest-ever private foundation for scholarships for needy students. They are immediately appealable. This appeal deals with the continuation of an injunction. It involves important constitutional concepts and public policy. The appeal should proceed.

Respectfully submitted,



Adele J. Pope
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S. C. Bar No. 4501

January 30, 2014

Order which subsequent orders continue, also trample on the property rights of Mr. Buchanan and Appellant in four pending lawsuits in which Mr. Bauknight is protecting the interests of Tommie Rae, James B. and Terry/Forlando Brown.

Bauknight Appears to Speak for Sojourner

In her response to the Return of Mr. Bauknight, Appellant suggested that Mr. Bauknight might not speak for Mr. Sojourner. To the extent that Mr. Sojourner now allows Mr. Bauknight to speak for him, both Appellant and the "I Feel Good" Trust, along with the real heirs, need one or more *pro bono publico* "others" to help enforce the "I Feel Good" Trust.

Mr. Sojourner has recently taken the unprecedented step – to the detriment of the Estate/"I Feel Good" Trust – of trying to undo the acknowledged heir status of three of Brown's children – Nicole, La Rhonda and Jeanette. The three had undergone the Estate's official heirs-adjudication procedure and all been acknowledged by the Estate in 2007 before any heirs proceeding was commenced.

Mr. Sojourner has also done nothing to continue the Peoples DNA Protocol by making James B. take the DNA test paid for in 2008. James B is not a presumed heir, and is the only claimed child to be born after James Brown's vasectomy. At the same time, Mr. Sojourner is fighting a GAL and DNA testing for Brown's incarcerated son Michael.

These actions, the filing suggests, may have been intentional rather than inadvertent or from lack of knowledge.

2000 Trust from being enjoined until a felon former trustee and co-trustees, the 3 seeking \$16 million in commissions and options or a "kickback" from an IPO to be formed, were reinstated was not necessary. Bauknight says of the protection of the Estate Plan in the *Wilson v. Dallas* appeal:

That's poppycock. Pure speculation from your client [Pope]. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement.

So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic]. You don't know the value. . . She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with it. ...You know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....

...[Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent....Your client didn't even try. Your client didn't know the numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Emphasis . Supp.]

Mr. Bauknight made these intemperate remarks in August 2013. Since May 8, 2013, he and Mr. Sojourner have acquired six or more *ex parte* orders, or orders which violated Due Process, and which continue the State/AG's 2008 plan to trample on the "I Feel Good" Trust's right to contract the half of Brown's heirs not challenging the estate plan to protect its royalties; to confirm that Brown had no spouse; to make a proper heirs determination, with Peoples DNA Protocol testing and acknowledgment for non-presumed heirs who pass. The *ex parte* orders, and the injunction of June 13

the documents; and Ms. Hynie and daughter Venisha witnessed a related Advisory Board document.

Mr. Sojourner's *ex parte* SA appointment, for which reconsideration is being sought in the Probate Court, and his ST appointment procured in violation of the Constitution, SCPC and *Wilson v. Dallas* remand, cast a permanent shadow on his ability to protect the "I Feel Good" Trust even if he elects to do so.

Revelations Made During and Since the October 1 Orders

Because of Mr. Bauknight's 2 ½ year ongoing fight to prevent release of documents under FOIA, it was not known until October 2013 that AG McMaster amended the Legacy Trust in 2011; that Bauknight's lawyers prepared the amendment; and the AG's office oversaw the transfer of Terry's interest in the ROFR to Forlando.

For the same reasons, it was not fully understood until late 2013 that the State/AG never authorized Wingate to sue in the State's name; never authorized Bauknight to assert that he had authority to speak for the State; and never authorized or knew about the 2012 \$563,000 payment to Wingate.

In 2014 the Federal Court will decide in the Forlando Federal Suit whether Forlando's share of the 2000 Trust, and the share of the Estate he secretly acquired from Terry in 2011 should be charged with the legal costs of Forlando's now-dismissed frivolous complaint to enjoin the 2000 Trust from taking any action until Brown's original trustee David Cannon and his co-trustees were reinstated.

Mr. Bauknight, knowing the intent of Terry/Forlando to destroy the "I Feel Good" Trust and acquire the assets for themselves, now says that Forlando did nothing wrong. He says Buchanan's and Appellant's action in the Forlando Suit to prevent the

all issued in a manner which purports to prevent Appellant and others from exercising FOIA rights; Due Process rights; First Amendment rights; and all related property rights.

Had Mr. Sojourner's and Mr. Bauknight's appointments not been *ex parte* and without Due Process or in compliance with the SCPC, these issues could have been explored. These are important issues of Constitutional rights and public policy.

Mr. Sojourner's Lack of Authority to Protect the "I Feel Good" Trust.

Mr. Sojourner's appears to lack concern for assuring that he has proper authority to try to protect the noble estate plan and vigorously defend it, as required by James Brown in two successive, carefully planned Estate Plans executed over two years. This suggests that he is not familiar with Mr. Brown's own voice tape made nearly 15 years ago on February 24, 1999 expressing the importance of the gift of his music empire for needy students of all races.

In that voice tape Mr. Brown asks that many duplicates be made; and that his own voice, free of any "hanky panky," be used to confirm his intention to give back and "stabilize what we are trying to do today." Mr. Brown attributes his success "despite all obstacles" to God. He confirms his intention to help poor students of all races – not just black students. Of directing funds to one race, he says "we've had enough of that in America already."

After making the February 24, 1999 tape Mr. Brown delayed signing to be sure he understood the documents. He signed the first Will creating the "I Feel Good" Trust on June 15, 1999 – 4 days after completing a \$26 million transaction in New York. He made the "I Feel Good" Trust's creation irrevocable, and funded his irrevocable trust a year later, on August 1, 2000. Two of his children and Ms. Hynie were there; witnessed

duty. They also include whether Ms. Hynie was Brown's spouse and whether her child was his child. The Aiken Court, based on State action and that of the Estate/2000 Trust, must, under the SCPC, hold these issues in abeyance until concluded.

The Footnote 29 was removed from the final *Wilson v. Dallas* decision based on AG Wilson's assurance he was getting out of the Wingate Suit and that he expected the FOIA matters to be resolved in the near future.

Two days after the decision, Wingate and Mr. Bauknight told the Richland County Court that the Supreme Court no longer had an interest in seeing these matter concluded. They asked to delay until the conclusion of all Aiken County matters – possibly for years:

a. FOIA # 1 - Where Plaintiff has since August 3, 2011 been seeking the AG's copy of any amendments to the Legacy Trust/Settlement Entity which sued her in the Wingate Suit and the AG's copy of the less-than \$4.7 million Appraisal of Brown's music empire which was the basis of a false felony claim lodged against Buchanan and Pope by AG Wilson's office, the Estate, the 2000 Trust, and Bauknight, claiming to be agent for the AG and others.

[Bauknight, for the Estate/2000 Trust, Tommie Rae, James B. and others, had been attempting to intervene in FOIA # 1 since 2011, and is still attempting to intervene on their behalf to stop FOIA compliance.]

b. FOIA #2 - Where Plaintiff has been seeking since August 10, 2011 a copy of the public Wingate Litigation Retention Agreement by which private attorney Wingate sued Buchanan and Pope naming the State/AG as Plaintiff and Bauknight as agent for the State/AG.

[Bauknight, for the Estate/2000 Trust, Tommie Rae and others, had been trying to intervene in FOIA #2 to prevent release of the Wingate Agreement since 2011, and obtain sanctions against Plaintiff for exercising her FOIA rights.]

The June 13 orders, October 1 Order and ex parte Sojourner SA order were

given nearly 25% of the assets Brown gave to needy students. He has fought bitterly to prevent ungagging more than a dozen of his own witnesses in the Wingate Suit, and Appellant and Mr. Buchanan, all of whom are familiar with Ms. Hynie's own widely-disseminated handwritten notes; have openly asserted that she is not Brown's spouse and knew it; but are now gagged by 2008 Gag Orders. The Gag Orders are clearly a First Amendment prior restraint on free speech.

Mr. Bauknight, through Wingate even sought to subpoena the notes of a journalist regarding an interview she had with a longtime friend of Brown about the so-called Hynie "Diary" contents. This was a direct violation of the Shield Law. Wingate withdrew the subpoena only after negative national attention was focused on the issue.

In his short tenure Mr. Bauknight has done nothing to undo the Gag Orders so that he, himself, can evaluation whether, as her attorney confirms, they will do irreparable harm to Ms. Hynie's claims against Brown's Estate. Nor has he asked to be heard on the Estate/2000 Trust's motions to Ms. Hynie's claims as both improper and filed in the wrong court.

Mr. Sojourner's Lack of Concern for Continuing FOIA Violations

In Footnote 29 of its first *Wilson v. Dallas* decision nearly a year ago, on February 27, 2013, the S.C. Supreme Court directed that FOIA matters be taken up and resolved in "the first instance." It expressed similar concerns about the Wingate Suit.

The Wingate Suit, based on rulings obtained by Wingate while purporting to speak for the State/AG, now has exclusive jurisdiction over certain critical matters. They include whether Buchanan and Appellant, or Bauknight, breached their fiduciary

\$10+ million; and Forlando a right of first refusal to buy the music empire (the "ROFR").

The ROFR was given by the AG in 2009 to Terry. The AG's senior assistant oversaw a secret 2011 amendment to the Legacy Trust and Terry's secret transfer of the ROFR to Forlando. As a result of the Bauknight's FOIA interference, this transfer was concealed for two years from State and Federal Courts.

Forlando/Terry *today* want to acquire the music empire based on Terry's and Bauknight's claimed less-than \$4.7 million at-death value. Forlando, however, has confirmed under oath that the less-than \$4.7 million was "bogus," and that \$150 million offers were available at the time of the 2008 settlement.

The June 13, 2013 order and the appointment orders were issued without a single question posed – or allowed to be posed – about these secret dealings. During the time, Forlando has been telling the Federal Court he was a peniless student, with no assets or expectation of assets from Brown's estate, and only wishing to carry out the noble estate plan of his famous grandfather.

The orders which enjoin any exploration of these secret transactions and make finding that Bauknight has no conflict and his attorneys have all acted properly, materially damage the "I Feel Good" Trust and the property rights of Appellant; all heirs who have been ignored; and all creditors who properly worked to uphold Brown's estate plan.

Mr. Sojourner's Failure to Seek to Set Aside the Hynie "Diary" Gag Orders

From early 2012 until today Mr. Bauknight has declared that Ms. Hynie was Brown's spouse; that her elective share was a "slam dunk;" and that she should be

MR. KENDALL: Your Honor, the – they talk about a failure to – our allegation of their failure to accept a hundred million dollar offer. They may have lots of good reasons that they want to put to the Court for not having accepted that. We have lots of good reasons we're going to argue, but that's a fact question.

The Orders affect the lawsuits and the false felony claim. They damage Appellant's property interest in being able to practice her profession and be properly paid for her PR/Trustee service.

The June 13 Orders and the October 1 appointment Order which is the subject of this appeal, without proper notice or hearing – and after enjoining Appellant from participating – make wholly unsupported claims that Bauknight and his counsel have performed properly. This directly, and adversely, affects Appellant's ability to protect herself. She is aggrieved by such orders. She is particularly aggrieved when the false claims have been made by Bauknight under color of State authority. They deny her property right. They threaten her ability to be able to practice law.

Appellant's and Mr. Buchanan's Property Rights in the Forlando Suit

Forlando and father Terry ("Terry/Forlando") – for whom Mr. Bauknight serves as agent in four separate lawsuits – knew when James Brown died that his leaving his \$100 million music empire "I Feel Good" Trust and setting up \$285,000 education trusts for Forlando and six other grandchildren was exactly what James Brown wanted.

But two weeks after Brown's death Terry/Forando contracted to pay Atlanta lawyer Louis Levenson 30% of what he could get them to dismantle the "I Feel Good" Trust. Terry/Forlando have since changed attorneys, but retained their plan.

Today Mr. Levenson wants to reinstate a settlement which will give him \$9 million from the "I Feel Good" Trust; Tommie Rae wants \$11+ million; her attorneys

to purchase Brown's music empire and conducting the *Wilson v. Dallas* appeal. They counterclaimed for damages and offset; Wingate failed to timely respond; and all Plaintiffs are now seeking relief from default. Material issues in that case include:

1. Is it correct Buchanan/Appellant owed no duty to Ms. Hynie because she was neither a spouse nor beneficiary?
 2. Is it correct that Buchanan/Appellant properly served the Estate/2000 Trust and conducted the *Wilson v. Dallas* appeal?
 3. Is it correct that Mr. Bauknight, Ms. Hynie and Terry Brown made false representations to the court about the value of Brown's assets; the heirs of James Brown; and their rights under the federal copyright act?
 4. Has Mr. Bauknight breached his duty of loyalty to the Estate/"I Feel Good" Trust by his relationship with and service to Ms. Hynie and her son.?
- d. The Estate/2000 Trust as well as Mr. Bauknight as agent for Ms. Hynie and James B., have moved to intervene in two FOIA Suits to prevent Appellant from obtaining public documents, including the recently-released Wingate 40% contract.

As an Interested Person under the SCPC, and as a creditor with a right to propose the 1999 backup Will for probate, Appellant has a right to participate in all actions which affect her property interest .

Mr. Bauknight, claiming to speak on behalf of the S.C. Attorney General, has for three years accused Mr. Buchanan and Appellant of the federal felony of overstating Brown's music empire by \$79 million to the IRS for the purpose of obtaining a \$5 million commission. He has told the Supreme Court that there were no offers to buy Brown's music empire. At the same time he sued Mr. Buchanan and Appellant for not accepting a \$100 million offer. As Exhibit A shows, on August 30, 2010 Mr. Bauknight's counsel told the Richland County Court:

- a. Mr. Bauknight currently serves as both agent for and Co-Plaintiff with Tommie Rae Hynie and James B. in 4 separate lawsuits.
- b. In one of the suits, Richland County Case 2010-CP-40-4900 (The "Wingate Suit") a primary issue is that Robert Buchanan, Jr. and Appellant owed Ms. Hynie no duty because she was not Brown's spouse, and Mr. Bauknight has been attempting for nearly a year, since the first *Wilson v. Dallas* decision, to prevent Ms. Hynie's deposition or summary judgment that she is not Brown's spouse.
- c. In the same suit, Mr. Bauknight serves as agent for Ms. Hynie's son, a minor with no GAL, and claims he is a son even though he is not presumed to be Brown's child; has refused the Peoples DNA Protocol; and is the only claimed child born during the 22 years between Brown's vasectomy and his death.
- d. Mr. Bauknight has bitterly fought – and continues to right – to keep 6-year old Gag Orders in place to prevent discussion of Ms. Hynie's handwritten notes which will do irreparable harm to her claims.
- e. Mr. Bauknight, as agent for both Ms. Hynie and James B., neither of whom is a resident of South Carolina, is trying to intervene in three S. C. Freedom of Information Act ("FOIA") Suits to prevent release of public documents which will damage Ms. Hynie's claims.

Appellant's Standing as an Interested Person

While the Memorandum sets out Appellant's standing on multiple grounds, her interest as an Interested Person under § 62-1-302 because she is a creditor is clear. It rests on the following:

- a. Appellant has not been fully paid for her 2007 SA service, even though it was an allowed claim; approved by the Court; and ordered to be paid, with interest at the legal rate on all unpaid amounts, by Order of Judge Early dated January 8, 2008 [the "Jan. 8 Order"].
- b. Appellant has not received a penny of PR/Trustee commissions for her service, even though \$1.4 million with interest was allowed and approved in the Jan. 8 Order.
- c. Appellant and Mr. Buchanan were sued by the Estate/2000 Trust on May 19, 2010 for, among other claims, not accepting a \$100 million offer

and her son control the Termination Rights under the Federal Copyright Act related to Brown's 800+ songs, about half the value of his music empire.

The claim has been generally known to be false since at least 2011. The Estate/"I Feel Good" Trust can secure its royalties to the 800+ songs for decades through Termination Rights agreements for a fraction of the nearly 25% of the "I Feel Good" Trust the 2008 settlement proposed to transfer to Tommie Rae.

The process is straightforward. The Estate/2000 Trust completes the Peoples DNA Protocol begun in 2007 for non presumed heirs. Then the Estate/2000 Trust makes modest but fair Termination Rights agreements with the necessary half of Brown's *real* heirs who are not challenging the Estate Plan.

Mr. Sojourner asserts that it is his duty to defend the Trust against the Will and Trust Challenges until they are resolved." The challenge of Louis Levenson, Esquire filed December 26, 2007 seeks an "administration in intestacy" (the "Levenson Suit"),

The proper heirs determination of heirs is critical to protecting the royalties under the Copyright Act. It would also be used to dilute the amount James B. would try to take from the "I Feel Good" Trust IF he passed the DNA test; and IF the Court did not find that he was intentionally excluded by the Will.

By Order of the Honorable Doyet A. Early, III dated March 8, 2008, the determination of heirs was approved even though the Estate/2000 Trust has two valid Wills. The Estate/2000 Trust consented to this Order so that it could protect the royalties with a correct heirs determination.

For Mr. Sojourner to be adopting the position taken by Mr. Bauknight is troublesome because:

asserted his predecessor AG did not want to bring the suit. He said the suit was authorized *for the Estate/2000 Trust*. He said:.

In this instance, the [AG] was particularly hesitant to sue because Appellants Pope and Buchanan enjoy a superb reputation throughout the legal community. Appellant Buchanan serves as a part-time federal magistrate judge and is a long time member of the South Carolina Bar. ... Appellant Pope has, for more than thirty years in South Carolina, been an outstanding attorney in the field of trust and estate matters. She is considered by the legal community to be an exceptional attorney. [p.25]

By December 2013 it was known that neither Mr. Bauknight nor Wingate was ever properly authorized to sue or settle with Mr. Buchanan in the name of the State/AG. Yet \$500,000 was paid from the Estate to buy releases from Mr. Buchanan for Tommie Rae Hynie, Terry Brown and Mr. Bauknight himself. And Mr. Bauknight secretly paid \$563,000 to Wingate in addition to the 40% contingency.

In both the June 13, 2013 orders, issued without notice or hearing, and the October 1 order, there is no exploration of these material issues.

Mr. Sojourner Reliance on the Agent and Co-Plaintiff of Hynie and James B.

On May 29, 2013 Tommie Rae Hynie and attorney Louis Levenson, Esq., asked Judge Early to go in chambers and hear why he should put in place *again* the 2008 settlement which dismembered The James Brown "I Feel Good" Trust as established in two successive Estate Plans of James Brown executed in 1999 and 2000.

The settlement was justified to the Court by a false "stipulation" that Tommie Rae Hynie was Brown's spouse; a "stipulation" that her son, who refuses testing under the Estate's official Peoples DNA Protocol, was Brown's son; and a false claim that Hynie

There is a substantial question whether the Probate Court and Judge Early lacked jurisdiction to issue the above appointments since SCPC §62-1-302 (a) limits the jurisdiction of the probate court to “the full extent of the Constitution.

Mr. Sojourner may have standing in the appeal to assert that his own appointments are constitutional and proper. His right to challenge the standing of another – especially one who has faithfully protected the Estate/“I Feel Good” Trust for seven years – is questionable.

Appellant’s and Mr. Buchanan’s Property Rights in the Wingate Suit

The Estate/2000 Trust is suing Appellant and Mr. Buchanan for tens of millions of dollars for, among other allegations, conducting the *Wilson v. Dallas* appeal. The Attorney General is a named Plaintiff in the Wingate Suit. As shown on Exhibit A, an assistant to AG McMaster, Havird Jones, Esq. attended hearings as a client, and allowed Mr. Wingate to introduce him as a client.

In the pleadings, in addition to representing the Estate/2000 Trust, Mr. Bauknight is pursuing the Wingate Suit as agent for Terry Brown, Tommie Rae Hynie, her son James B. He also claims in the Complaint to be speaking “on behalf of Henry McMaster as Attorney General of South Carolina.”

As shown on Exhibit A, Mr. Wingate claimed for three years to be the sole law firm representing the State/AG and a dozen private clients, most non-residents of South Carolina.

The claims of Mr. Wingate and Mr. Bauknight they they were suing, and settling with Mr. Buchanan, in the name and on behalf of the State/AG began to unravel with AG Wilson’s Petition for Rehearing in *Wilson v. Dallas* filed in March 2013. AG Wilson

facts not revealed at the "hearing" including :

- a. He was – and is – suing Appellant as PR/Trustee, as agent for Tommie Rae Hynie and as claimed agent for the Attorney General of South Carolina in Richland County Case 2010-CP-40-4900 (the "Wingate Suit").
- b. He was – and is – interfering as PR/Trustee and as agent for Hynie in three separate suits under the S.C. Freedom of Information Act ("FOIA"), to prevent disclosure of public documents, including those which will help demonstrate she was not Brown's spouse and knew it.
- c. He secretly paid \$563,000 – in addition to a 40% contingency – to the firm of attorney Kenneth B. Wingate, Esq. in 2012 to continue the Wingate Suit, even though Wingate had made no recovery from anyone.
- d. Wingate/Bauknight settled the Wingate Suit with Robert Buchanan, Jr. with a payment from the Estate of \$500,000 to Mr. Buchanan to secure release from Buchanan's counterclaims against Hynie, Bauknight and the Legacy Trust, improperly using Estate funds for these non-beneficiaries.
- e. Wingate had no authority to name the State/AG as a Plaintiff in the Wingate Suit or to claim that he was the attorney for the State/AG, and Bauknight had no authority to claim in the Wingate Suit that he was acting "on behalf of" the State/AG.
- f. Neither Wingate nor Bauknight advised AG Wilson of the \$563,000 payment to Wingate.

8. Mr. Bauknight claims that the \$563,000 he paid Wingate's firm is not subject to review under the *Wilson v. Dallas* remand.

b. An *ex parte* Order of the Honorable Sue Roe, Probate Judge purporting to appoint Mr. Sojourner limited special administrator which was issued without a summons, without service on anyone, without notice, and without a hearing.

The extraordinary *ex parte* order was then delivered to Mr. Bauknight's lawyer to be served on all Interested Parties, but was not served on anyone. The *ex parte* Probate Court Order was discovered by Appellant – an Interested Person – in a review of the public records.

Levenson, Esq., and Tommie Rae Hynie announced May 29, 2013 to *again* dismember The James Brown "I Feel Good" private foundation, taking \$50 million restored to needy and deserving students by the South Carolina Supreme Court on May 8, 2013 in the *Wilson v. Dallas* decision.

Mr. Sojourner's Claimed Standing

Mr. Sojourner claims standing under two orders:

a. An Order of the Honorable Doyet A. Early, III dated October 1, 2013, which is the subject of this appeal and names Mr. Sojourner limited special trustee. The Order was issued based on:

1. Mr. Sojourner's Petition, which had no summons itself, but was attached to a petition containing a summons directed to "All Necessary Parties," but which was not served on anyone.
2. The Petition was not served on Appellant who has standing on multiple grounds.
3. Nor was it served on acknowledged heirs La Rhonda Pettit, Nicole Parris or Jeanette Mitchell, or beneficiaries Forlando, Daryl, Jason Lewis, Janise, Lindsey, or Romunzo, as required by the SCPC, among others ;
4. Nor was it served on two claimed heirs awaiting DNA testing under the Estate's Official Peoples DNA protocol, one (Michael) incarcerated in California and awaiting testing since 2007.
5. Nor was it served on creditors, including Appellant, and/or others who had made a Demand for Notice, as required by the SCPC.
6. The appointment was then made after a hearing which violated even the most minimal Due Process standards, including that Appellant and others were enjoined from participating and even those who found out about the hearing with no service or proper notice were not allowed to question either Mr. Sojourner or Mr. Bauknight.
7. At the time of the hearing Mr. Bauknight had not accounted for 18 months and concealed from the Court critical, material

ignore that all have been at the service of Tommie Rae Hynie, her son James B. and Terry/Forlando Brown since 2009. They ignore that Bauknight, like Ms. Hynie and Louis Levenson, Esq., is seeking to reinstate an unjust settlement which destroys the "I Feel Good" foundation; destroys the reputations and property rights of those who defended Brown's noble estate plan; and destroys the Federal Copyright Act rights of the half of Brown's real heirs who are not challenging the Estate Plan – the half with whom the Estate/"I Feel Good" Trust should be making Termination Rights agreements.

The orders also ignore the mandate of *Wilson v. Dallas*.

These orders materially damage Appellant's and Mr. Buchanan's property right to restore the reputations and careers they enjoyed on May 19, 2010. when Mr. Bauknight, claiming to speak on behalf of the the Attorney General of South Carolina ("State/AG") sued them. They damage Freedom of Information Act ("FOIA") rights in three suit where Mr. Bauknight, to benefit himself and Ms. Hynie, is seeking to intervene to prevent the release of public documents. They damage Appellant's and Mr. Buchanan's ability to protect themselves from false claims of of both Forlando Brown and the 2000 Trust, speaking through Mr. Bauknight, in the counterclaim trial related to his now-abandoned frivolous suit, expected to be tried in 2014.

Mr. Sojourner's Return is Not Timely

Mr. Sojourner's Return, without explanation, was filed nearly a month after the Memorandum Related to Appealability filed with this Court by Appellant at the direction of the Honorable Jenny Abbott Kitchings.

Unfortunately, it also comes after action and inaction of Mr. Sojourner, under the questionable claim of authority described below, appears to endorse the plan of Louis

Appellant responds to the Letter/Return of David C. Sojourner, Jr. ("Sojourner") dated January 28, 2014, received January 29, 2014, to her Memorandum Related to Appealability.

Appellant respectfully adopts both her original Memorandum and her response to the Letter/Return of Russell L. Bauknight, and supplements them with the following facts related to this extraordinary appeal and the appeal of the June 13, 2013 Orders of The Honorable Doyet A. Early, III, and the Honorable Liz Godard purporting to enjoin Appellant and others from participating in any James Brown cases. This continuing injunction and the appealed orders continue a plan endorsed by the State to punish; refuse pay to; and ruin the careers of Appellant and Robert Buchanan, Jr. Their offense: daring to challenge the authority of the Attorney General (the "State/AG") to take over James Brown's private property and "I Feel Good" Foundation and to challenge the Order of the Honorable Doyet A. Early, III approving the takeover.

Mr. Sojourner asks this Court to dismiss Appellant's appeal with actual knowledge that the appealed orders purport to prevent Appellant and Mr. Buchanan from protecting themselves and their property interests – as they did for the Estate/2000 Trust until May 8, 2013 – in the suit filed January 2, 2008 by Brown's grandson Forlando, 3:08-cv-00014-WOB-SGW (the "Forlando Federal Suit") and other suits.

The orders, with findings wholly unsupported by any record and devoid of any examination of the appointees, tout the propriety of Mr. Bauknight's service, and even the service of Mr. Bauknight 15 main attorneys and members of the firm of Kenneth Wingate, Esq. ("Wingate") he has engaged. The orders and lack of Due Process

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

The Honorable Doyet A. Early, III Circuit Court Judge

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No.2013-002582**

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

REPLY TO RETURN OF DAVID C. SOJOURNER, JR.

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
December 23, 2013
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(3) that relate to an "injunction" or the "appointment of a receiver"; and (4) that affect a "substantial right" that "determines the action and prevents a judgment from which an appeal might be taken." *Id.*; *see also* S.C. Code Ann. § 14-3-330. None of these exceptions apply here. The subject order does not pass upon the merits of any litigation involving Mrs. Pope; the subject order does not follow from a special proceeding; the subject order does not relate to an injunction or the appointment of a receiver; and the subject order does not affect a substantial right of Mrs. Pope.

III. Conclusion

In what can only be described as a complete disregard for the rule of law, Mrs. Pope continues to meddle in the affairs of the James Brown Estate and Trust. Her selfish desire to re-write history is needlessly costing the Estate and Trust monies that have been directed for charitable purposes. Mrs. Pope continues to initiate wasteful appeals, and in doing so, the Estate and Trust is forced to incur fees and costs. Her conduct is creating waste, and the Estate and Trust respectfully requests that this Court put an end to it. For the reasons outlined above, respectfully, the Court should dismiss this appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. David Black", with a horizontal line extending to the right.

J. David Black

JDB/gb

Jenny Abbott Kitchings
Clerk of Court
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Page 6

B. Mrs. Pope does not have Standing

It is important to clearly frame the issue presented. Mrs. Pope does not represent *any* of James Brown's heirs. She represents *herself* and she has no cognizable legal interest in who serves as the interim Personal Representative and Trustee. Moreover, the Supreme Court has held that Mrs. Pope can no longer have any involvement with the Estate and Trust. Once the Supreme Court sent the remittitur to the Aiken County Clerk of Court, Mrs. Pope was legally precluded from further involvement with the James Brown Estate and Trust (save her claim for a portion of the \$5 million creditor claim). Accordingly, the Supreme Court's decision forecloses this appeal.

"An appeal filed by one who has ceased to be a party to a suit is a mere nullity." *Nance v. Nationwide Ins. Co.*, 273 S.C 617, 619, 258 S.E.2d 105, 1065 (1979). "A party cannot appeal from a decision which does not affect his or her interest . . ." *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002); *see also* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."). Mrs. Pope's appeal must be dismissed.

C. The Appointment Order is Not Appealable

The Appointment Order is temporary. The order is set to expire at the conclusion of the Will and Trust challenges. Once the challenges are concluded, the Court will enter a final order appointing permanent trustees. Accordingly, the order is not appealable.

"The right of appeal arises from and is controlled by statutory law." *EnerSys Del., Inc. v. Hopkins*, 401 S.C. 615, 616, 738 S.E.2d 478, 479 (2013). "Generally, a party may only appeal from a final judgment and piecemeal appeals should be avoided because most errors can be corrected through a new trial." *Id.* at 617, 738 S.E.2d at 479. Because the subject order is temporary, it is not appealable.

If an "order . . . fall[s] within one of the enumerated subsections," *Id.* at 617, 738 S.E.2d at 479, of Section 14-3-330, however, it may be appealable. As it relates to the subject appeal, the enumerated exceptions relate to the following types of orders: (1) that pass upon the "merits"; (2) that are made in a "special proceeding";

1 MR. WINGATE: May it please the Court, Your
2 Honor. Ken Wingate along with my partner, Rhett
3 Kendall.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And we are before you today in
6 connection with the Irrevocable Charitable Trust
7 established by the entertainer James Brown.

8 As Your Honor is aware from the pleadings,
9 our firm represents the 15 or so Plaintiffs listed on
10 the caption of the case which include globally all of
11 the beneficiaries of this Irrevocable Trust, both the
12 charitable and private individuals.

13 I would ask that Your Honor -- well, first,
14 let me introduce -- we're here representing, as you're
15 aware from the caption, an array of folks. I believe
16 Your Honor knows Sonny Jones ---

17 THE COURT: Yes.

18 MR. WINGATE: --- an attorney with the South
19 Carolina Attorney General's office, one of our
20 clients. Also we represent Russell Bauknight who is
21 very critically, Your Honor, the professional Trustee
22 of this Trust. I'll just come back and address that
23 in a moment. His counsel, Freddie Kingmore is here
24 with us today. And then one of the family members,
25

1 didn't say ---

2 MR. KENDALL: --- run into the wall and we're
3 going to show that they did.

4 Your Honor ---

5 THE COURT: Burt Lancaster, thank you, very
6 much. Go ahead. Burt Lancaster.

7 MR. KENDALL: Your Honor, the -- they talk
8 about a failure to -- our allegations of their failure
9 to accept a hundred million dollar offer. They may
10 have lots of good reasons that they want to put to the
11 Court for not having accepted that. We have lots of
12 good reasons we're going to argue but that's a fact
13 question. That issue's never been disposed of, just
14 because we've heard about it before. The refusal to
15 sign a consent and similar things.

16 One of the things, Your Honor, that -- that
17 we need to -- I want to bring to the Court's attention
18 as I know you're going to have to consider this
19 carefully, is a lot of this has been addressed. In
20 fact, a lot of the challenges they've raised are
21 addressed, in fact in the Settlement Agreement and the
22 Order approving the Settlement Agreement. Not the
23 issues that we raised as allegations of negligence in
24 the breach of trust of fiduciary duty but rather the
25

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 18 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals The Honorable Doyet A. Early, III Circuit Court Judge

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J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

PETITION FOR REHEARING

TO: THE HONORABLE CHIEF JUDGE AND AND ASSOCIATE JUDGES

Petitioner respectfully submits this Petition for Rehearing of the Order of the Honorable Paul E. Short, Jr. for the Court, dated January 30, 2014, a copy of which is attached hereto.

Petitioner asks the Court to alter, reconsider and vacate the said order so that this appeal may proceed as a part of, in tandem with or after, Appellate Case No. 2013-00169. Petitioner/Appellant respectfully submits that the Court overlooked or misapprehended the following:

1. The Court overlooked or misapprehended that the Orders which are the subject of this appeal are final orders, even though they bear the name "interim", because of their scope and the final and irreparable damage they cause to Appellant, The James Brown "I Feel Good" Foundation, a majority of the heirs of James Brown under State law and the Federal Copyright Act, and all creditors and others who seek to enforce the noble estate plan of James Brown.

2. The Court overlooked or misapprehended that Appellant has special interest standing to enforce the "I Feel Good" Foundation, which is aggrieved and irreparably damaged by the October 1, 2013 appointment Order which is the subject of this appeal.

3. The Court overlooked that the South Carolina Probate Code Provides that an action for the appointment of a personal representative is concluded with the appointment.

4. The Court overlooked or misapprehended that the only reason Petitioner was not a named party to the proceeding was that the Honorable Doyet A. Early,

III, and the Honorable Liz Godard, Clerk of Court, in violation of Appellant's Due Process and First Amendment Rights, and those of others seeking to enforce the "I Feel Good" Trust, issued three orders, without notice or hearing, on June 13, 2013 (The June 13 Orders") which:

- a. Purport to enjoin Petitioner and others from participating in James Brown Estate and Trust cases, even though Petitioner is a party to a pending suit brought against her by the Estate/Trust and two FOIA suits in which the Estate has sought to intervene.
- b. Direct the Clerk of Court to remove Petitioner's unheard motions from the public record;
- c. Direct the Clerk of Court not to accept Appellant's filings.

5. The Court overlooked or misapprehended that the unprecedented June 13 Orders are now the subject of an appeal in this Court as Appellate Case No. 2013-00169, and that the brief in the said appeal is expected to be filed within the next 30 - 60 days.

7. The Court overlooked or misapprehended that the October 1 appointment Order continues the injunction of Appellant as a creditor; as the proposed guardian ad litem ("GAL") for James Brown's incarcerated son Michael Deon Brown; and as an "Other" under Section 62-7-405(a) of the South Carolina Trust Code with Special interest standing to enforce the "I Feel Good" Trust.

8. The Court overlooked or misapprehended that Appellant/Petitioner is aggrieved in all of said capacities by the October 1 Order because they affect her/their property rights, and her reputation and liberty; she was enjoined by the June 13 Order and by failure of service from participating; and she/they received no notice or right to be heard in the appointment as required by the Probate Code.

9. The Court overlooked or misapprehended that Russell L. Bauknight has made material misstatements to the Court, and secured his appointment by concealing for a period of nearly a year \$563,000 in payments to attorney Kenneth Wingate, Esq., from what he asserts was a \$5 million estate at the death of James Brown.

10. The Court overlooked or misapprehended that Petitioner has standing to proceed with this appeal as fully set out in the Memorandum of Appealability filed herein, of which she asks the Court to take judicial notice; and the Replies filed to letter returns of Mr. Bauknight and Mr. Sojourner to the Memorandum..

11. The Court overlooked or misapprehended that this appeal was filed as part of Appellate Case No. 2013-00169; is a continuation of an improper injunction; and should not be dismissed.

12. The Court overlooked or misapprehended that an order which by its terms continues until the conclusion of all litigation in the Estate of James Brown is not an interim order.

13. The Court overlooked or misapprehended that the appointments which are reflected in the October 1 Order were secured by a Petition which failed to name a single party, and that nobody was served with the Petition, violating Due Process and the Probate Code.

14. The Court overlooked or misapprehended that since the Attorney General has declined to help correct the serious threats to the "I Feel Good" Foundation by four years of State control; James Brown, its settlor, is deceased; and Bauknight is currently serving as agent for Tommie Rae Hynie and James B.

In four pending lawsuits, the "I Feel Good: Trust is aggrieved and Petitioner has special standing to enforce it under Section 62-7-405 of the South Carolina Trust Code.

15. The Court overlooked or misapprehended that Petitioner has not ceased to be a party to this or certain others of the more-than 15 James Brown cases, and that she had a right as an Interested Person and creditor to be a party to all which affect her property interest, as does this.

16. The Court overlooked or misapprehended that Bauknight has run roughshod over the rights of most heirs, devisees, and beneficiaries of the estate plan of James Brown – not serving any of them with the petition which resulted in the October 1 Order which is the subject of this appeal, and that those whose rights he violated included:

- a. DNA-proved and acknowledged children: La Rhonda (died Dec. 2013); Jeanette; Nicole;
- b. Child incarcerated and seeking DNA confirmation since 2007: Michael
- c. Daughter of first marriage: Lisa
- d. Claimed child seeking DNA testing: James Curtis.
- e. Adult Grandchildren beneficiaries of 2000 Trust: Forlando, Romunzo, Lindsey, Janise
- f. Appellant and other creditors who have made proper demand for notice as provided in the Probate Code.

17. The Court overlooked or misapprehended that in filings with this Court and in the Richland County Court Bauknight has, and still does, represent himself

to be acting "on behalf of" the Attorney General of South Carolina; that the Attorney General is a Constitutional Officer elected by the voters of South Carolina to a four year term. See S. C. Constitution art. VI, § and the Chief Legal Officer; and that Bauknight has not authority to act for the AG.

18. The Court overlooked or misapprehended that, while acting under color of State authority, and with the concurrence of the State/AG until 2013, Bauknight has accused Petition/Appellant and Robert Buchanan, Jr. of the federal felony of intentionally overstating the value of James Brown's worldwide music empire by \$79 million to the IRS on a sworn estate tax return for the improper purpose of obtaining a \$5 million commission.

19. The Court overlooked or misapprehended that Bauknight also engaged and authorized the law firm of Kenneth Wingate, Esq., to sue Petitioner/Appellant and Buchanan in the name of the Attorney General of South Carolina while both served as agents for Tommie Rae Hynie, and that such action was improper.

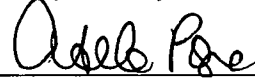
20. The Court overlooked or misapprehended that the very act of having to defend oneself against the State violates all notions of fair play and Due Process., and the the misuse of sovereign power is "not unlike hunting mice with an elephant gun." See *EEPC v. New Enterprise Stone & Lime Co.*, 74 F.R.D., 628, 632 (W.D. Pa. 1977).

21. The Court overlooked or misapprehended that Bauknight is currently seeking to intervene in three separate FOIA suits to assist Hynie in preventing the release of public documents, and that such action violates the rights of Appellant and other South Carolina citizens.

22. The Court overlooked or misapprehended that the claim to speak for the State while acting for Hynie was improper and material.

23. The Court overlooked or misapprehended that multiple and continuing orders of the Honorable Doyet A. Early, III and the Probate Court after the June 13 Orders, which are *ex parte* orders and/or obtained without service, notice or hearing, exacerbate the damage of the June 13 Orders and injunction.

Respectfully submitted,



Adele J. Pope
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Newberry, South Carolina 29108
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Email: adele@popelawfirm.com

Attorney for Appellants

February 12, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

RECEIVED

FEB 18 2014

Appellate Case No. 2013-02582

SC Court of Appeals

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are.....Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are...Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

MOTION AND MEMORANDUM IN SUPPORT OF HOLDING
IN ABEYANCE

TO THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES:

Appellants/Petitioners respectfully move this Court for an Order holding this matter, including consideration of Appellants' Motion for Rehearing of the Dismissal Order of the Honorable Paul E. Short, Jr., in abeyance until the following occurs:

1. This Court has ruled on the appeal from Aiken County Case No. 2013-CP-02-1337 ("Case 1337"), the initial brief of which was mailed for filing on February 11, 2014;
2. This Court has ruled on the appeal in Appellate Case No. 2013-00169, the initial brief of which is expected to be filed within sixty-days, if not earlier.

The ground of this motion are that Pope is currently seeking to protect her own rights under the Due Process and First Amendment Clauses of the United States and South Carolina Constitutions, as well as those of James Brown's incarcerated son Michael Deon Brown, and The James Brown "I Feel Good" Trust.

Pope, Robert Buchanan, Jr. and their small group of attorneys were the only persons protecting the "I Feel Good" Trust from August 10, 2008 until May 8, 2013, when the final decision was reached in *Wilson v. Dallas*, 743 S.E.2d 746 (2013). That decision overturned a plan to put Brown's private property under State control and give away more than half of the \$100 million fortune Brown gave to his "I Feel Good" Foundation for needy students in two successive estate plans.

Pope and Mr. Buchanan's constitutional and public interest standing, including statutory standing as "others" under Section 62-7-405 of the South Carolina Trust Code ("SCTC") to protect the "I Feel Good" Trust, was not reached in the *Wilson v. Dallas* decision because the Court found they had standing to appeal on other grounds. Footnote 5 of that decision said:

We need not reach Appellants' alternative arguments that they have constitutional standing or standing under the public importance exception.

Constitutional and public importance standing, including Pope's right to speak as an "Other" under SCTC Section 62-7-405, are at play in all three now-pending appeals because:

1. The "I Feel Good Trust" and Brown's real heirs are under direct threat, and the Court has enjoined Appellant from protecting an incarcerated son supported by Brown during minority in a pending Intestacy proceeding, refusing to grant her GAL Petition or conduct a hearing. He has done so despite the prisoner's call to Appellant to thank her for helping him.
2. The "I Feel Good" Trust is in jeopardy because Buchanan and Pope are enjoined from participating and neither Mr. Bauknight nor his appointee is protecting the 1999 Will, which makes Brown's estate plan ironclad. It is under threat of becoming void under the 10-year rule of the Probate Code if Mr. Bauknight serves or the injunction against Pope continues.
3. Pope is one of few experts in the State who can explain how the now-void 2008 Settlement proposed to take \$50 million from the "I Feel Good" Trust to "buy" Copyright Act termination rights it could have secured from the half of Brown's children intentionally excluded from the settlement for about \$100,000 (or less) a year.
4. Pope understands how damaging it was to the "I Feel Good" Trust's future -- and the scholarships it will provide under the IRS 5% Rule -- for Mr. Bauknight to have claimed it was less than \$1 million at Mr. Brown's death, rather than the correct approximately \$80 million.
5. The Attorney General has withdrawn from protection of the "I Feel Good" Trust in these important matters.
6. A second state takeover of Brown's private property and second dismembering of the "I Feel Good" Foundation will threaten private philanthropy in South Carolina for decades. And our Stated needs private philanthropy.

Appellant and Mr. Buchanan have a property interest in seeing that Mr. Bauknight not serve in any fiduciary capacity with respect to the Estate of James Brown and the "I Feel Good" Trust because:

1. He has falsely accused them of the federal felony of intentionally overstating James Brown's assets to the IRS by \$79 million for the improper purpose of obtaining a \$5 million commission.
2. As is demonstrated by the *Wilson v. Dallas* decision, the false felony claim met its mark, in part, and resulted in Petitioner and Mr. Buchanan being replaced as PR/Trustees under Brown's will and 2000 Trust.
3. At the same time Mr. Bauknight told the Supreme Court that Brown's worldwide music empire was worth \$4.7 million and that there had been no offers to buy the music empire, Mr. Bauknight was suing Mr. Buchanan and Appellant for tens of millions of dollars in Richland County Case 2010-CP-40-4900 (the "Wingate Suit") for not accepting a \$100 million offer for the music empire.
4. Mr. Bauknight's false felony claim threatens both the careers and the liberty of Appellant and Mr. Buchanan.
5. Each day, more is being revealed about the impropriety of Mr. Bauknight, the Wingate Firm and others in the Wingate Suit, including that most of the 15 Plaintiffs never signed the 40% contingency Litigation Retention Agreement.
6. Recently, it was discovered that Mr. Bauknight secretly paid the Wingate Firm \$563,000 in 2012, in addition to the 40% contingency; that AG Wilson was not told of the \$563,000 payment; and that it was concealed by Mr. Bauknight until October 2013.
7. Mr. Bauknight made this payment even though Mr. Wingate was in default as to the counterclaims; had not recovered a dime; and Mr. Bauknight had paid Mr. Buchanan \$500,000 from the Estate to have Tommie Rae Hynie and others released from Mr. Buchanan's counterclaims.
8. Much of what is coming to light is from public documents which Mr. Bauknight has tried to prevent from being released by both the Attorney General and the "Legacy Trust" created by former AG McMaster to hold the private assets of James Brown in the

now-declared-void settlement.

9. When the appointment Order which is the subject of this appeal was issued, there was no hearing as defined in the Probate Code.

10. Mr. Bauknight was allowed to make statements with no right of any party – even those not enjoined from attending – to cross examine him.

11. The Orders which are the subject of this appeal simply re-state the self-serving claims of Mr. Bauknight, and are contrary to the record.

12. For example, Mr. Bauknight praised himself – and the Court then praised Mr. Bauknight – for withholding \$1 Million from the \$285,000 education trusts of 7 of James Brown's grandchildren, although most of them are currently of school age and need their education funds now.

13. Mr. Buchanan and Appellant worked during their SA service and PR/Trustee service to be certain that the beneficiaries of these \$285,000 education funds not become victims of litigation.

Appellant, who has not been paid for her service from 2007 - 2009, even though a Court Order directs that it be paid, with legal interest since it became due, has served *pro bono publico* since May 8, 2013 to do several things:

1. To help see that the dismemberment of the "I Feel Good" Trust, which Appellant, Mr. Buchanan, *Pro bono publico* lead counsel James Richardson, Esq., Tressa Hayes, Esq., and James Bailey, Esq. put our Supreme Court in a position to stop, is not dishonored.

2. To protect the "I Feel Good" Trust from the announced intention of Tommie Rae Hynie and Louis Levenson, Esq. to allow the State/AG to again take over James Brown private property and "give" from his "I Feel Good" Foundation: \$11+ million to Ms. Hynie; \$10+ million to Ms. Hynie's attorneys; about \$9 million to Mr. Levenson; and an undisclosed amount to Mr. Bauknight and his 20 or more attorneys.

3. To see that Ms. Hayes and Mr. Bailey are paid for the fine service which helped save \$50 million the State proposed to take from the "I Feel Good" Trust, being about \$200,000

over a 4-year period for the two.

4. To restore my reputation and career, and that of Mr. Buchanan, both of which have been ravaged by the false accusations of Mr. Bauknight and Mr. Wingate – both of whom claimed to speak for the State of South Carolina with no authority to do so.

5. To obtain the public documents I have sought under FOIA and which Mr. Bauknight, to protect himself and Ms. Hynie, is trying to intervene in three separate FOIA cases to secrete.

6. To help make South Carolina a safer place for private philanthropy than it was for James Brown.

7. To help AG Wilson and the Court understand that they have been misled by Mr. Bauknight and Ms. Hynie about the Federal Copyright Act, and that the half of James Brown's children who openly support his estate plan are the ONLY people necessary to protect the "I Feel Good" Trust's Royalties to more than 800 James Brown songs for needy students for decades.

8. To use the expertise I have acquired in interaction between probate and copyright termination rights issues to help AG Wilson and the Court understand that what the now-void settlement proposed to "achieve" for the "I Feel Good" Trust at a cost of about \$50 million – more than \$20 million to lawyers – could have been achieved for about \$100,000 per year by giving a little dignity and appreciation to Brown's REAL heirs who were not challenging his noble estate plan, including:

1. Daughter from first Marriage: 1. Lisa
2. DNA-proved under Estate's Protocol and Acknowledged by Estate in 2007: 2. La Rhonda (died in December 2013); 3. Nicole; 4. Jeanette
3. Awaiting DNA testing since 2007: 5. Michael (incarcerated)
4. Awaiting DNA testing: 6. James Curtis
5. Have Repudiated the 2008 Agreement: 7. Daryl, 8. Terry.

Appellant respectfully requests that, as a result of the emerging constitutional issues related to Appellant, Brown's incarcerated son Michael, and the "I Feel Good" Foundation, including the failure of anyone other than Appellant to protect Brown's 1999 Will, which is in danger of the 10-year rule; the refusal of Judge Early to conduct a hearing on voiding 6-year-old Gag Orders; Mr. Bauknight's continued representation of Ms. Hynie and her son in the Wingate Suit; and Mr. Bauknight's continued interference with FOIA rights, with other important issues, this Court hold this matter in abeyance.

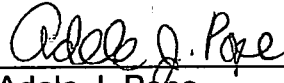
Judicial economy and the constitution will be served if this Court first addresses in Appellate Case No. 2013-00169 whether the following June 13, 2013 directives of Judge Early, issued without notice or hearing, can withstand constitutional scrutiny:

1. Remove Appellant's unheard motions from the public record;
2. Appellant has no standing to participate in cases related to the Estate of James Brown and the 2000 Trust (which sued her, and which case is pending);
3. The Clerk is directed not to accept future filing of Appellant.

These directives are the subject of a separate appeal. The injunction of the June 13 Orders which is the subject of that appeal is what prevented Appellant from participation in the Orders which are the subject of this appeal.

Holding this matter in abeyance until the above questions are decided will serve the Constitution and judicial economy.

Respectfully submitted,



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S.C. Bar No. 4501
Pro se

February 12, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 18 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

Appellate Case No. 2013-02582

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,
v.
Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are.....Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are...Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

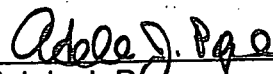
AFFIDAVIT IN SUPPORT OF ABEYANCE

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who being duly

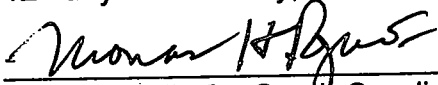
sworn, deposes and says:

1. I am the Appellant in the Motion for Abeyance.
2. The facts stated in the Motio/Memorandum are true to the best of my knowledge and belief.
3. I care about private philanthropy in our state and the "I Feel Good" Private Foundation.
4. My request to be GAL for Brown's imprisoned son is consistent with my concerns for the "I Feel Good" Trust.
5. It is my opinion to a reasonable degree of professional certainty that charities holding copyrights, to protect themselves under the Federal Copyright Act, should properly identify all heirs in the probate proceeding, then work at arm's length only with those who do not challenge the gift to the charity.
6. It is my opinion to that same degree State/AG's withdrawal, coupled with Mr. Bauknight's and his appointee's ignoring more than half of Brown's heirs while protecting Ms. Hynie's son threatens great damage to the "I Feel Good" Trust.
7. By virtue of my study and writings, I have expert knowledge in this area.
8. Ms Hynie's son is the only post-vasectomy claimed child of James Brown; was not born or any marriage; and has refused DNA testing for 7 years.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this
12th day of February, 2014


Notary Public for South Carolina (L.S.)
My Commission expires: 3-28-2022

RECEIVED
FEB 24 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Lower Court Case Nos. 2008-CP-02-1647; 2009-CP-02-1810; 2007-ES-02-0056

Appellate Case No. 2013-002582

Ex parte: Adele Pope,..... Appellant,
In Re: The Estate of James Brown a/k/a James Joseph Brown,.....Respondent.

RETURN TO PETITION FOR REHEARING

I. Background of Appellant’s Involvement in the Estate and Trust Litigation

A. Appellant’s appointment and removal as a fiduciary.

The Estate of James Brown has been entangled in numerous appeals before this Court and the South Carolina Supreme Court. The Appellant Adele Pope was initially appointed by the circuit court in March 2007 as Special Administrator with the limited duty to oversee the handling of Brown’s Estate after petitions were filed by some of Brown’s family members seeking the removal of the original personal representatives who Brown had named in his Will. *See Dallas v. Wilson*, 403 S.C. 411, 419, 743 S.E.2d 746, 751 (2013). In November of 2007, after the original fiduciaries either resigned or were removed for cause, Ms. Pope became the personal representative and trustee for

Brown's Estate and Trust.¹ *Id.* The South Carolina Attorney General intervened in the Estate and Trust litigation, and in August of 2008, Tommie Rae Hynie (who purports to be the surviving spouse of James Brown), Brown's children and grandchildren, and the Attorney General entered into a compromise agreement, which was submitted to the circuit court for its approval. *Id.* at 420, 743 S.E.2d at 751. Ms. Pope objected to the agreement, and in January of 2009, the circuit court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the limited purpose of providing input and recommendations to the court regarding the compromise agreement. *Id.* The circuit court approved the agreement in May of 2009. Under the terms of the agreement, Ms. Pope was removed for good cause as the personal representative and trustee and Mr. Bauknight replaced her. *Id.* at 420-22, 743 S.E.2d at 751-52. Ms. Pope appealed.

B. The South Carolina Supreme Court has affirmed Appellant's removal, finding her removal is in the best interest of the Estate.

On May 8, 2013, the Supreme Court issued an opinion reversing the circuit court's approval of the settlement, but affirming the removal of Ms. Pope as personal representative and trustee. Specifically, the Supreme Court rejected Ms. Pope's pleas to the contrary and found that the circuit court "did not violate the statutory provision regarding the removal of [Ms. Pope]" because "it was in the best interests of the estate." *Id.* at 448, 743 S.E.2d at 765. In so finding, the Supreme Court described the good cause for removal as follows:

Appellants [Ms. Pope and Mr. Buchanan] have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants

¹ Robert Buchanan was appointed as Special Administrator and later as the personal representative and trustee along with Ms. Pope during this time frame. Since the Supreme Court issued its opinion in *Wilson v. Dallas* in May of 2013, Mr. Buchanan has had no involvement in the Estate of James Brown litigation other than seeking compensation for his previous service, and he has not joined Ms. Pope in her appeal.

sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.

Id. at 448-49, 743 S.E.2d at 767.

In addition to affirming the removal of Ms. Pope for cause, the Supreme Court also found that Mr. Bauknight's appointment was void because it was made in conjunction with the now overturned compromise agreement. However, the Court explained that on remand, "[t]he circuit court may consider [after proper application] whether Bauknight should be appointed to fill a fiduciary position." *Id.* at 449, 743 S.E.2d at 767.

II. Order on Appeal and Dismissal

On remand, Judge Early has attempted to proceed with the Estate and Trust litigation, but his progress has been stifled by Ms. Pope's relentless insistence to remain involved despite her removal for cause and the Supreme Court's rejection of her appeal from that removal. Since the Supreme Court issued its opinion in *Wilson v. Dallas*, Judge Early reviewed numerous applications from individuals seeking to become fiduciaries for the Estate and Trust, and on October 1, 2013, he issued an order which (1) installed David C. Sojourner as the interim special administrator and special trustee of the James Brown Estate and Trust for the purpose of defending claims challenging the validity of the Will and Trust documents and (2) installed Russell L. Bauknight as the interim

personal representative and trustee of the James Brown Estate and Trust for all other purposes. Ms. Pope, who in May of 2009 was removed for cause as a fiduciary and whose removal was affirmed by the Supreme Court in May of 2013, has filed a Notice of Appeal from Judge Early's order appointing new fiduciaries on an interim basis.

Upon receiving Ms. Pope's Notice of Appeal, this Court asked the parties to file appealability memoranda. After reviewing those memoranda, The Honorable Paul E. Short dismissed the appeal for two independent reasons: (1) Ms. Pope was not an aggrieved party and therefore could not champion an appeal of the order, and (2) the underlying order appointing interim fiduciaries was temporary in nature and not immediately appealable. Ms. Pope has now filed a petition seeking a rehearing of that order, which Mr. Bauknight opposes.

III. Ms. Pope Has No Standing to Appeal

To have standing to appeal from an order, Ms. Pope must be "an aggrieved party." See S.C. Code Ann. § 18-1-30 (allowing aggrieved parties to appeal); Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, or sentence may appeal."). To be an aggrieved party, Ms. Pope must show the appealed order "operates on h[er] rights of property or bears directly upon [h]er interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970); see also *Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (refusing to entertain the appellants' appeal from a sanctions order because the trial court imposed sanctions against the appellants' attorney, which did not prejudice the appellants' rights).

This is an appeal from an interim order appointing fiduciaries. Ms. Pope was not appointed as a fiduciary, did not apply to become a fiduciary, and indeed *could* not apply to be a fiduciary because the circuit court and the Supreme Court have already determined that her continued participation is not in the best interests of the Estate. Accordingly, other than her claim against the Estate for unpaid fees, which is an entirely different case pending in the circuit court, Ms. Pope has no interest in the James Brown Estate and Trust litigation and cannot champion this appeal. See *Bivens*, 254 S.C. at 13, 173 S.E.2d at 152 (“The right of review is restricted to persons or parties aggrieved by the decision below. A party, therefore, cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.”).

In her petition for rehearing, Ms. Pope sets forth numerous arguments for why she has standing to appeal. None of them has any merit.

A. “Special interest standing” is applicable only when a taxpayer attempts to sue the State.

Ms. Pope claims to have “special interest standing” to enforce the Trust. The term “special interest standing” has only ever been used when a taxpayer attempts to sue the State and is required to show a “special interest” beyond the small interest of a general taxpayer. See, e.g., *Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941) (“The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer.”); *Beaufort County v. Trask*, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct. App. 2002) (explaining the general rule of taxpayer standing requires a special interest). Furthermore, Ms. Pope never moved to intervene below as a party with “special interest standing” and cannot now attempt to appeal on that basis.

B. Ms. Pope is not the guardian of Michael Brown and did not file this appeal on behalf of Michael Brown.

In paragraph 6 of her petition for rehearing, Ms. Pope argues, in part, that she has standing “as the proposed guardian ad litem (‘GAL’) for James Brown’s incarcerated son Michael Deon Brown.” However, she has neither been appointed as his guardian, nor has she filed this appeal on Michael Brown’s behalf or in her capacity as an attorney. Ms. Pope’s notice of appeal was filed on her own behalf. She signed her name and purposefully referenced herself as “Appellant, *Pro Se*.” She cannot now try to gain standing based on “guardian status.”

C. Ms. Pope does not have standing under S.C. Code Ann. § 62-7-405.

Ms. Pope also claims to have standing as an “other” under S.C. Code Ann. § 62-7-405. Pursuant to subsection (c): “The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.” Although the term “others” is not defined by the statute, this Court need not determine the universe of individuals who might be included in that subgroup so long as it can determine that a former trustee, removed for good cause because (in the words of the Supreme Court) it would not be in the best interest for her to continue to serve as a fiduciary, is *not* an “other” who can enforce the trust.

D. The order on appeal does not affect Ms. Pope’s property rights, reputation, or liberty.

In paragraph 8 of her petition, Ms. Pope argues that the order on appeal affects her “property rights, and her reputation and liberty.” However, she fails to explain how this is so, and without guidance from her, it is not apparent how her property and liberty interests are affected by an order appointing interim fiduciaries to a position from which she has been removed and for which she did not apply.

E. Ms. Pope's pending claim to fees for her service as a fiduciary does not give her standing to be a party to this action.

Ms. Pope further argues that she is a party to this action because she is an "Interested Person and creditor." Ms. Pope's claim as a creditor, in which she is seeking her share of \$5 million in fees, remains pending in Aiken County under a separate lower court case number. Her creditor's claim is not affected by the interim appointment of fiduciaries and having a claim against the Estate does not give Ms. Pope standing to reinsert herself in the Estate and Trust Litigation, especially when the Supreme Court held that her continued service was not in the best interests of the estate. *Cf. Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (refusing to entertain the appellants' appeal from a sanctions order because the trial court imposed sanctions against the appellants' attorney, which did not prejudice the appellants' rights).

Ms. Pope, who was neither a party to the action below nor aggrieved by the order, may not champion this appeal. Accordingly, her petition for rehearing should be denied.

IV. The Interim Order Is Temporary in Nature and Not Immediately Appealable

In addition to finding Ms. Pope had no standing to appeal from Judge Early's interim order, this Court correctly found that the order was temporary in nature and not appealable. In her petition for rehearing, Ms. Pope argues the order on appeal is final (*see* ¶¶ 1, 3, 12) and that it continues an injunction (*see* ¶¶ 7,11). Neither of these arguments is correct.

According to our Supreme Court, an order is not final "[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties." *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). Here, the order on appeal appoints fiduciaries on a temporary basis and is set to expire at the conclusion of the Will and Trust challenges. The temporary

appointment of fiduciaries does not determine the rights of Ms. Pope, who never even applied to be a fiduciary.

Nor does the order appointing temporary fiduciaries continue an injunction, as Ms. Pope argues. It bears repeating that Ms. Pope did not apply to be a fiduciary, and this order did not enjoin her from becoming one. In an effort to manufacture an appellate issue, Ms. Pope refers back to orders issued by Judge Early on June 13, 2013. Those orders are subject to an entirely different appeal. Additionally, the June 13 orders do not contain injunctions either; they merely carry out the Supreme Court's mandate that Ms. Pope be removed as a fiduciary (the only role she played in the underlying litigation).

V. Conclusion

Ms. Pope had the opportunity to appeal from her removal as a fiduciary. She lost that appeal. Her role in this litigation is over. Mr. Bauknight urges this Court to deny the petition for rehearing and send a message to Ms. Pope that any future attempts to insert herself in this litigation will not be tolerated.

Respectfully submitted,



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James Brown and the Special Trustee of
the James Brown August 1, 2000
Irrevocable Trust Agreement

February 24, 2014

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Lower Court Case Nos. 2008-CP-02-1647; 2009-CP-02-1810; 2007-ES-02-0056

Appellate Case No. 2013-002582

Ex parte: Adele Pope,..... Appellant,

In Re: The Estate of James Brown a/k/a James Joseph Brown,..... Respondent.

RETURN TO MOTION TO HOLD APPEAL IN ABEYANCE

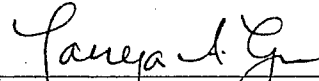
Appellant Adele Pope asks this Court to stay this appeal, and includes a request that the Court refrain from considering her petition for rehearing of the dismissal of this appeal, until the Court issues opinions in two other appeals: (1) appellate case number 2013-001649 in which initial briefs have not yet been filed; and (2) appellate case number 2014-000250, which Ms. Pope filed less than two weeks ago, on February 7, 2014. This Court dismissed Ms. Pope's appeal for two, independent reasons. First, it found she was not a party to the orders below. Second, it found the orders on appeal were temporary in nature and not immediately appealable. Unless the Court grants her petition for rehearing, which Ms. Pope asks that it not consider until months or possibly years from now, it cannot entertain her motion because she has no standing to file it.

Ms. Pope claims the stay she seeks is necessary to “protect her own rights under the Due Process and First Amendment Clauses of the United States and South Carolina Constitutions, as well as those of James Brown’s incarcerated son Michael Deon Brown, and The James Brown “I Feel Good” Trust. Importantly, Ms. Pope filed this appeal solely on her own behalf, and she signed the notice of appeal as well as this motion “*pro se*.” Thus, she cannot represent anyone’s interests but her own. Furthermore, she has been removed as the trustee of the “I Feel Good” Trust for cause, and that removal was affirmed by the Supreme Court. *Dallas v. Wilson*, 403 S.C. 411, 448-49, 743 S.E.2d 746, 767 (2013) (finding Ms. Pope’s continued service as a fiduciary was not in the best interests of the estate based on her sale of iconic assets to raise funds that first went to pay her own fees, her attempt to sell Brown’s GRAMMY award despite the longstanding policy that such an award cannot be sold, and the extreme discord between the parties). Finally, Ms. Pope’s only personal interest in the Estate litigation is her outstanding claim for fees, which has nothing to do with the orders on appeal and remains pending. Accordingly, this Court correctly dismissed the appeal, and in any event, the motion provides no compelling reason why the matter should be held in abeyance.

Motions like this one have made the orderly administration of the Estate of James Brown unnecessarily difficult and costly. Motions like this one are the reason the Supreme Court found that Ms. Pope’s continued involvement would not be in the Estate’s best interests. Motions like this one should be discouraged, and Ms. Pope should be warned that she risks being sanctioned if she continues to file motions like this one.

[Signature block on following page]

Respectfully submitted,



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the James Brown August 1, 2000
Irrevocable Trust Agreement

February 24, 2014

Columbia, South Carolina

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No.2013-002582

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas
and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna
J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

REPLY TO RETURN TO PETITION FOR REHEARING

Appellant responds to the Return of Russell L. Bauknight to her Petition for
Rehearing. Petitioner craves reference to, and stands by, her Petition as filed. She
incorporates her Reply to Mr. Bauknight's Return to Motion to Hold in Abeyance

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FEB 28 2014

SC Court of Appeals

filed herewith.¹ Finally, she asks the Court to reconsider and reverse its dismissal after holding this matter in abeyance for as little as three months, to consider:

1. The record in appellate case no. 2013-00169.²
2. The record in appellate case no. 2014-00250.³

She also makes the additional responses set out herein.

I. Responses to Mr. Bauknight's Statement of the Background.

A. General Response

Mr. Bauknight states:

The Estate of James Brown has been entangled in numerous appeals before this Court and the South Carolina Supreme Court.

A more complete statement of the Background is:

After being entangled in appeals by James Brown's original PR/Trustees David Cannon and Albert Dallas, the Estate of James Brown was set free from the State's proposed takeover of Brown's private property and his James Brown "I Feel Good" Private Foundation by the South Carolina Supreme Court on May 8, 2013 in

1

Without enumerating them in detail, Appellant asserts that the allegations and conclusions in the Return, in large measure, do not correctly reflect the record of the James Brown cases.

2

The Initial Brief of Appellant and designation of matter to be included in the record on appeal ("ROA") were filed February 21, 2014. Exhibit A contains a portion of the Initial Brief.

3

The Initial Brief of Appellant and designation of matter to be included in the ROA were filed February 11, 2014. Exhibit B contains a portion of the Initial Brief.

its decision of *Wilson v. Dallas*.⁴

The proposed takeover was brokered by a former Attorney General ("AG") on August 10, 2008. On January 30, 2009 Russell L. Bauknight asked the Court to approve the dismembering of Brown's estate plan. The circuit court did so on May 26, 2009.

In the AG's settlement, the State/AG, with no knowledge of its impact on the "I Feel Good" Foundation's 800+ copyrights to James Brown's songs, "stipulated" that Brown's companion Tommie Rae Hynie would be considered Brown's spouse for all purposes. Her son – not a presumed child -- would be "stipulated" to be a son without DNA testing.

The AG, Hynie and other "settling parties" contracted in the August 10 agreement to file a petition to replace PR/Trustees Robert Buchanan, Jr. and Adele Pope.

The AG's settlement came 11 days after AG McMaster had written Buchanan and Pope confirming his approval of them as permanent trustees of the "I Feel Good" Foundation. He had never challenged their status or actions as personal representatives.

The State/AG also agreed to join Hynie and the other "settling parties" to try to defeat the interests of half of Brown's known children and claimed children.

Five of Brown's then-known children were intentionally left out of the AG's agreement, even though they have rights equal to or greater under the Federal Copyright Act termination rights provisions than the settling parties.

⁴ 403 S.C. 411, 743 S.E. 2d 746.

B. Specific Response – The Wingate Suit Appeal

The most compelling appeal, providing essential background, is from Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). It came before this Court in 2011.

On May 9, 2010 the law firm of Kenneth Wingate, Esquire ("Wingate"), sued Robert Buchanan, Jr. and Appellant for tens of millions of dollars for the State/AG and almost fifteen plaintiffs: Plaintiffs included Bauknight as agent for Hynie and many nonresidents of South Carolina.

The Wingate Suit was filed by Wingate as sole counsel for all plaintiffs. The AG was not named as counsel, and did not sign the complaint or any subsequent filing.

The Wingate Suit seeks millions of dollars from Buchanan and Appellant for conducting the *Wilson v. Dallas* appeal and other claimed wrongdoing.

Wingate moved for relief from default as to Buchanan/Appellant's counterclaims for abuse of process and other counterclaims in 2010.

The Wingate Suit is the first known tort lawsuit by an AG against his own citizens in the State in which the AG is not listed as counsel on the complaint or subsequent pleadings and a private law firm is the sole attorney for both the State and a number of non-residents.

The Court of Appeals dismissed the appeal and an accompanying writ as premature.

The Wingate Case is still pending.

One year after the *Wilson v. Dallas* decision Bauknight continues to serve as agent in the Wingate Suit for Hynie, James B., and other non-devisee, non-beneficiary contestants of Brown's estate plan..

Buchanan and Appellant contend that it was not constitutionally permissible for Wingate to represent the State/AG, nor Bauknight to speak for the State/AG, while advancing the interests of Hynie and her son.

In his March 2013 Petition for Rehearing in *Wilson v. Dallas* AG Wilson advised the Supreme Court that AG McMaster had not authorized Wingate to bring the Wingate Suit with the State/AG as a plaintiff.

AG Wilson's statement was inconsistent with the actions of Sr. Assistant AG Havird "Sonny" Jones over the preceding three years. Jones attends most of the Wingate Suit hearings. At one of the first hearings he was introduced by Wingate as one of the firm's approximately fifteen clients.

From 2011 until 2013 Bauknight and Hynie conducted a bitter fight to prevent release of the public Wingate Litigation Agreement under FOIA.⁵ The Wingate Agreement would have clarified the question.

When released, it did⁶.

5

Bauknight, acting for Hynie, her son, Terry/Forlando Brown and others, is currently seeking to intervene and prevent FOIA compliance in three separate FOIA Suits filed during the pendency of the *Wilson v. Dallas* appeal.

6

The Wingate Agreement was released in late 2013 by a federal judge in case no 3:08-cv-00014-WOB (the "Forlando Federal Suit"). It is now known Wingate had no written authorization to sue in the State's name. Bauknight had no written authority to claim he was suing "on behalf of" the State/AG. Nor were any individual plaintiffs other than Bauknight parties to the 40% contingency fee. The Wingate Agreement was signed by Bauknight, who has about 20 attorneys, Levenson, Bell and counsel for Hynie. Hynie and these lawyers expected more than \$30 million

The Wingate Suit also alleged that Buchanan and Appellant had damaged the Plaintiffs by not accepting a 2007 \$100 million offer to buy Brown's music empire.

While suing Buchanan/Pope for not accepting a \$100 million offer, the State/AG, Bauknight and Hynie represented to the South Carolina Supreme Court that there were never any offers to buy the music empire. They also represented to the Supreme Court that the at-death value of Brown's music empire was under \$4.7 million.

They represented that Buchanan and Appellant had intentionally overstated the value of the music empire by \$79 million for the improper purpose of obtaining a \$5 million commission.

They concealed a 2006 appraisal of the Royalties by a professional appraiser and other documents which would show the allegations were false.

C. The August 10, 2008 Settlement

Mr. Bauknight states:

In August of 2008 ...Hynie (who purports to be the surviving spouse..), Brown's children and grandchildren and the Attorney General entered into a compromise agreement which was submitted to the circuit court for approval...Ms. Pope objected to the agreement.

A correct statement is:

In August of 2008 Hynie, who all of Brown's acknowledged children have now confirmed was not Brown's spouse, fewer than half of Brown's DNA-proven or presumed

from the AG's settlement.

children and one claimed-but-unconfirmed grandchild entered into a compromise agreement .

The AG and settling parties intentionally omitted, and agreed to try to defeat the interests of:

1. DNA-proven and acknowledged daughters: 1. La Rhonda;
2. Nicole; 3. Jeanette
2. Daughter from first marriage: 4. Lisa
3. Son (incarcerated in California) 5. Michael, awaiting testing under the Estate's official "Peeples DNA Protocol" since 2007.
4. Other "Doe Defendants" in the Levenson Intestacy Suit filed December 26, 2007. This included 6. James Curtis.

The AG's settlement disrupted the Estate/2000 Trust's DNA & DIGNITY program for identifying Brown's real heirs and making agreements with the most cooperative HALF – from those not challenging the estate plan – to protect the "I Feel Good" Trust's Royalties for decades⁷.

With proper completion of the Peeples DNA Protocol and agreements with ONLY those omitted from the AG's 2008 agreement, the Royalties could have been secured for decades,

By 2011 and 2012 Daryl and Terry had repudiated the AG's Agreement, asking publicly that the Will and 2000 Trust be enforced.

Every fiduciary who has served James Brown other than Bauknight opposed the AG's agreement.

⁷ If the Estate /"I Feel Good" Trust had not been immediately able to secure termination rights agreements with a cooperative HALF of Brown's real heirs, multiple strategies exist to otherwise protect the Royalties. See *Nine Ways to Avoid Copyright Terminations, Part I and PartII*;also see Smith, Pope, *Private Foundation, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*[unpublished draft, 2011]

D. Terms of the AG's Agreement

Mr. Bauknight states:

Under the terms of the agreement Ms. Pope was removed for good cause as the personal representative and trustee and Mr. Bauknight replaced her.

A correct statement is:

The State/AG, Tommie Rae and others agreed:

...that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust...[Agr., p. 2]

While they had already selected Bauknight before he gave his January 30, 2009 "independent" opinion that the AG's settlement should be approved by the Court, this part of the agreement was not disclosed. Bauknight testified he did not know who was going to be appointed the next PR/Trustee.

II. The South Carolina Supreme Court, without a complete record of the improper actions of Bauknight and Hynie which the AG condoned or overlooked, confirmed the replacement of Buchanan and Pope.

A. The Court's confirmation of replacement of Buchanan and Pope

For about \$200,000 in legal fees, and headed in the final 3 ½ years by *pro bono publico* lead counsel James Richardson, Esquire, the Supreme Court was given the opportunity to – and did – void the AG's settlement. The settlement had threatened to dismember not only the "I Feel Good" Trust but seven \$285,000 trusts for certain designated grandchildren.

Appellant's and Buchanan's counsel were not asked to protect them against

the mounting fabrications of Hynie and Bauknight in which two Attorneys General actively joined until March 2013.

There was no basis to give 52 ½ % of Brown's music empire to a non-wife and fewer than half of Brown's properly identified children. [Exhibit D] There was no basis to give a son ("Terry") a right of first refusal ("ROFR") to buy Brown's assets at "fair market value" and then participate in a devaluation to \$4.7 million which reduced the "I Feel Good" Trust to almost nothing.

The devaluation became more troublesome in January 2011 when Bauknight and a Sr. Assistant AG became involved in the secret transfer of the ROFR from Terry to his son Forlando. [See Exhibit E]

Now Forlando – who knew that \$84 million was a conservative value, and had testified that \$150 million offers were available in 2008 – was placed in a position to exercise a ROFR at less than 1/15 that amount.

Bauknight, the Sr. Assistant AG and Terry/Forlando fought FOIA and other requests to keep this secret transfer secret for two years.

From 2008 until 2013 the AG simply parroted Hynie's attorneys, even though they were directly adverse to the "I Feel Good" Trust.

Mr. Bauknight continues today as agent for Hynie and Terry/Forlando in four lawsuits. One is the Wingate Suit. He has not; cannot; and will not protect Brown's estate plan.

B. Bauknight and LSA/LST Appointment Not on Proper Application

All of Bauknight's appointments, and those of the LSA have either been ex

parte or in direct violation of the Due Process and Probate Code rights of Brown's heirs, devisees, beneficiaries and Interested Persons who have made demand for notice.

Brown's heirs, devisees, beneficiaries and Interested Persons were not served with the Summons and Petition which led to the orders which are the subject of this appeal. Appellant is one of those who had a right to be served. So are Michael, for whom she has a pending GAL petition, and claimed son James Curtis.

Appellant was enjoined from participating or naming proposed PR/Trustees.

The Advisory Board and the nomination of Ronald Stanley, Esq. and former Warner Music executive Ray Gonzales were ignored.

The "hearing" was a non-hearing. Not a single question was allowed to be asked of Bauknight or the LST.

During the process, Bauknight concealed \$563,000 he had paid Wingate in 2012 – in addition to the 40% contingency.

Even modest questioning would have revealed :

1. Bauknight's less than \$4.7 million "appraisal" is wholly inconsistent with the facts, and is directly contradicted by a \$42 million professional appraisal of the Royalties (without even considering the Publicity Rights) in 2006 in connection with a Royal Bank of Scotland transaction.
2. Hynie was not Brown's spouse and knew it. She, Brown and Dallas had a three-way conversation in 2006 in which it was confirmed that Hynie was a mere guest at his Beech Island mansion.
3. James B. is not Brown's son.
4. The \$84 million at-death value placed on the music empire by Buchanan and Pope on the Estate Tax Return is correct and conservative.
5. Had the assets been reported at their proper value, the AG's settlement

would have generated millions of dollars in taxes.

6. The estate tax proceeding needs further reporting and adjustment because:

A. Mr. Bauknight's claim on the Return that Hynie is Brown's surviving spouse will cause the Estate/"I Feel Good" problems in Copyright Termination Rights issues and otherwise unless Corrected.

B. Mr. Bauknight's claim on the estate tax return that less than \$3 million goes to the "I Feel Good" Trust – instead of the correct at-death approximately \$80 million – will distort the required payments to needy students under IRS guidelines.

7. Mr. Bauknight's claim to the Supreme Court that Hynie's elective share claim was a slam dunk was inaccurate, as was the claim that she and her son control the Copyright Act terminations.

8. The AG and Mr. Bauknight knew at least by the time of the Smith/Pope draft article, *Private Foundations* in 2011 that recognition, dignity and modest contracts with the HALF of Brown's *real* heirs not contesting Brown's estate plan was all that was necessary to protect the Royalties for decades.

9. The AG has either joined in or failed to correct misrepresentations about heirs, offers and value made by Bauknight and others.

10. The AG has allowed the fabricated Wingate Suit to continue for three years, and consolidated a Newberry FOIA Suit with it.

11. Mr. Bauknight touted a "settlement" in the Wingate Suit with Buchanan which was invalid and against public policy to make it appear that Appellant and Buchanan were at odds in their positions. They were not.

12. Bauknight, the AG and Terry/Forlando Brown concealed Legacy Trust amendments and a transfer from Terry – who supported the AG's Settlement– to Forlando, who was telling the Federal Court he opposed it.

It is reasonable to project that if the juggernaut of 10 Taxpayer-paid lawyers, 15 lawyers for Bauknight, 8 for Forlando and 5 for Hynie had not carried out a 4-year attack on Buchanan, Appellant and their small team – or if Bauknight had not withheld court-approved funds due them – the result might have been different.

Mr. Bauknight claims Appellant and Buchanan lost. While arguably they did for themselves, they put the Supreme Court in a position to save both the "I Feel Good" Trust and private philanthropy in South Carolina. And it did.

On the day before the Supreme Court oral arguments, Mr. Bauknight's attorney gave an interview reported in over 330 media outlets attacking Buchanan and Pope. With that level of power applied against them, Buchanan and Appellant were powerless to make the Court understand that the vitriol never came from Buchanan and Pope or their fine team. They were simply carrying out their duty to vigorously defend the estate plan of James Brown.

III. Order on Appeal

The word "Administrative" on Judge Early's permanent injunction in the June 13 Orders does not keep it from being an injunction. Likewise, the title "Interim" on the appointment orders does not make them interim.

They are permanent. They last until the conclusion of all litigation.

The Due Process rights of everyone who seeks to enforce the "I Feel Good" Trust and the Due Process and Equal protection rights of Brown's real heirs have been trampled on since the June 13 Orders. The October 1 appointment is a continuation of the June 13 injunction.

The October 1 Order praises Bauknight for having a summons on his petition. It disregards that it neither named nor was served on heirs, devisees, beneficiaries or Interested Persons who had demanded notice. Appellant is one of those. Further, Appellant and other were enjoined from the process by a direction in the June 13 Orders that the Clerk of Court remove Appellant's filed motions from

the record and not accept any future filings.

Attempts to be heard since June 10, 2013 on why Bauknight's appointment should be voided or he be removed for cause were not heard or considered at the September "hearing." The "hearing" did not meet the Probate Code definition of hearing.

Nobody who supported the estate plan was allowed to participate. No questions were allowed.

As one small example:

Mr. Bauknight bragged that he had \$1 million in the bank for payment of education funds of grandchildren Lindsey, Janice, Romunzo and others. He bragged that he was holding it until the conclusion of all litigation.

He did so even though all prior PR/Trustee had cleared the way for these students not to be held hostage to the litigation.

Having these students sign a ratification of the 2000 Trust and receive their funds should have been done February 28, 2013 at the latest.

And it would have helped in the defense of the estate plan.

The appointment order does not chastize Bauknight this cruel treatment of student grandchildren. It praises him.

There are numerous additional examples.

IV. Appellant has Special Interest Standing under § 62-7-405; Standing as a Creditor; and as Proposed GAL for Michael and others

A. Appellant has Special Interest Standing under Section 62-7-405

South Carolina Trust Code Section 62-7-405 confers standing to enforce charitable trusts on the Attorney General, the Settlor, the Trustee and others.

The "I Feel Good" Private Foundation is a charitable trust as defined in the Trust Code. The "I Feel Good" Trust is set out in four separate documents, including two successive Wills (1999 and 2000.) Both wills have incorporation by reference provisions to create the "I Feel Good" Trust even if the trust associated with the will is missing.

Fifteen years ago – on February 24, 1999 – Brown prepared a voice tape as he was preparing to sign the first will/revocable trust creating the "I Feel Good" Foundation. It is a compelling expression of his wishes.

It has never been heard by an Aiken County Court, even though it has been in the Estate's possession since shortly after Brown's death.

In the three years before Brown's death, after his 2000 Trust had been funded for years, all of the now-contestants to Brown's estate plan discussed his estate plan with him. Tommie Rae and the children Brown acknowledged in the Will have all admitted in the Wingate Suit that:

...the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. [Mem. Opp., p.2, 8/27/10]

All children of James Brown and all fiduciaries except Bauknight – who serves as Hynie's agent in four lawsuits – have confirmed that Brown died without a spouse.

There was absolutely no basis in 2008 to give Tommie Rae more than \$11 million and her lawyers \$10 million. There was no basis to give Levenson \$9 million.

Had the 2000 Will been set aside, the 1999 Will stood to make it ironclad.

The voice tape in Brown's famous voice was icing on the cake.

But the AG's settlement gave lawyers wanting \$20 million a taste of something they did not deserve. And they will not let go.

It was Levenson, Hynie's lawyer and Bell who signed the Wingate 40% contingency fee contract with Bauknight in 2010. Many children did not even know about the suit in which they were Plaintiffs -- or the 40% contingency.

It was Levenson, Hynie's lawyers and Bell who authorized Bauknight, Hynie and Wingate to interfere with three FOIA suits -- and to seek sanctions in the name of children who did not know they were trying to intervene.

It was Bauknight who became Hynie's principal spokesperson. When asked after the decision whether Buchanan's and Pope's role in *Wilson v. Dallas* helped the estate, he stated:

That's poppycock. Pure speculation from your client. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic].

You don't know the value. . . . She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with it. ...You know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....

...[Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent....Your client didn't even try. Your client didn't know the

numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Emphasis supplied.]

For a full year Bauknight has done nothing to dismiss the claims of Hynie; require DNA testing of James B. under the official Peeples DNA Protocol; or allow requested DNA testing of Michael, James Curtis and the Doe Defendants.

Bauknight and the LSA are fighting a GAL for an incarcerated son. They are either condoning or participating in interference by Bell and others with the Estate/"I Feel Good" Trust's ability to secure its copyright for decades by treating Brown's real heirs with dignity; completing the Peeples DNA Protocol for non-presumed heirs; and seeking agreements with the most cooperative half.

Both have fought the admission to probate of the 1999 Will, and placed it in great jeopardy of the 10-year rule.

Neither has argued that *all* heirs should be determined and allowed to help show Brown had no wife.

Bauknight will not do it. He is still her agent.

In short: Bauknight and his appointee LSA/LST have abandoned the "I Feel Good" Private Foundation. The AG – once too involved – has abandoned the "I Feel Good" Trust.

As a result of Bauknight's conflict, the A G's withdrawal, the jeopardy faced by the 1999 backup will, and the threat to Brown's royalty copyrights by actions which favor Hynie, Appellant and Buchanan, in addition to their individual rights, have Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust.

Bauknight and the LST are not just refusing to act. They are allowing Bell and others to usurp the termination rights contracts Bauknight should have completed –if not earlier – the moment the February 27, 2013 decision was rendered.

Where the Settlor is dead; the Attorney General has withdrawn; and the fiduciaries are openly hostile to the private foundation, Section 62-7-405 standing is not just appropriate. It is essential.

Appellant does not seek to be Trustee. But she does seek – and but for the injunction of the June 13 Orders – should have been involved in, helping find three PR/Trustees with the ability; interest and energy to take on the protection of what should now be South Carolina's largest-ever private foundation dedicated solely to the education of needy students.

Appellant currently serves as trustee of a tiny foundation. She formed and assisted for years the Pope-Brown Foundation. She is currently assisting an approximately \$50 million upstate family foundation as it transitions to its third generation⁸. She has special knowledge of the interplay of copyright termination law and State Probate law. She has worked *pro bono publico* since May 8, 2013 to help enforce the "I Feel Good" Trust.

Appellant has multiple standing to be part of this appeal and the process.

⁸ A trustee of the Graham Foundation has stated in an affidavit that he might not have recommended the engagement of Appellant by the Foundation for the self study if he had not known of her work and experience with others before the James Brown accusations against her.

V. Appellant's Role in the Litigation is not over

In his conclusion on page 8 Mr. Bauknight states:

“ Her role in this litigation is over.”

Had Mr. Bauknight not brought the Wingate Suit in the wrong county and prevailed in keeping it there, he might be right.

Had Mr. Bauknight not intervened for Ms Hynie and others in two FOIA Suits as to which he has no right to intervene – then consolidated one with the Wingate Suit – the public documents necessary to bring his false claims to an end might have been released three years ago.

That did not happen.

For more than a year since the first *Wilson v. Dallas* decision, Bauknight – and now the LSA – have blocked the Richland County Court's proceeding with important issues. Bauknight does so even though he and the State/AG prevailed in their claim that the following matters must be heard in Richland County:

1. Are Buchanan and Appellant correct that they owed no duty to Tommie Rae and James B. because neither is an heir, devisee or beneficiary of James Brown?
2. Did Buchanan and Pope commit the federal felony of intentionally overstating Brown's music empire by \$79 million to the IRS, or does the estate tax return need to be corrected because Bauknight claimed:
 - a. Brown's worldwide music empire was worth less than \$4.7 million;
 - b. Brown's TPP was worth only about \$.5 million;
 - c. Tommie Rae was Brown's spouse and got about \$1.3 million;
 - d. The AG's "Legacy Trust" is entitled to a \$3 million charitable deduction even though \$2 million of it is going to private

individuals?

3. Did Brown really give about \$80 million to the "I Feel Good" Trust, as claimed by Buchanan, Pope, Cannon, Dallas and Bradley – or about \$1 million as claimed by Bauknight?

4. Have the State/AG, Bauknight and Tommie Rae misrepresented the heirs and their rights under the Copyright Law to multiple courts by claiming Tommie Rae is the spouse when she is not, and ignoring *real* heirs who are not challenging the estate plan, including: Michael, La Rhonda, Nicole, Lisa, and Jeanette?

5. Should James B. – the only claimed child born in the 22 years between Brown's vasectomy and his death – have been required, and Michael, James Curtis and DOE Defendants allowed, to complete the Estate's official \$300 Peeples DNA Protocol?

V. Appellant's Application to be GAL for Michael and Others

Judge Early's declining to appoint her GAL for Michael, or hold a hearing, is damaging both the "I Feel Good" Trust and Michael.

Bell – known for filing false grievances, threatening grievances and filing false affidavits – is claiming to be Michael's lawyer. But he has not filed a *pro hac vice* application or protected Michael in the Hynie petition proceeding where he is protecting son Terry.

Michael still needs a GAL under Rule 17 (c). And – unsolicited– he called Appellant to thank her for applying.

The "I Feel Good" Trust needs to properly identify and make agreements with the most cooperative half of Brown's heirs – the ones who expect the least from the "I Feel Good" Trust; will be proud to be acknowledged; and will be proud to be supporting their father's noble estate plan.

On May 29, 2013 Hynie's counsel and Levenson – expecting about \$20

million in legal fees from the AG's Settlement – announced their plan to re-do the State's takeover and dismember "I Feel Good" Trust – again. Bauknight and his LSA/LST are helping them do just that.

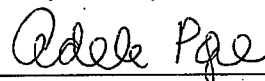
VI. Appellant as a Creditor who made demand for notice has Standing.

As a creditor Appellant had a right to participate in the appointment proceeding. She was denied that right by failure of service and the injunction of the June 13 Orders. She was also denied by a hearing which was not a hearing.

Conclusion.

Appellant respectfully requests that the Rehearing decision be delayed until the Court has the full record in appellate case numbers 2013-00169 and 2014-00250. Should the Court elect to proceed, she requests that the Petition for Rehearing be granted; the dismissal reversed; and the appeal proceed.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com

Attorney for Appellants

February 27, 2014

Exhibits:

Exhibit A - Partial, Initial Brief - 2013-00169

Exhibit B - Partial, Initial Brief - 2014-00250

Exhibit C- DNA & DIGNITY Plan to Protect Royalties

Exhibit D - Toberoff Ltr., 9/13

Exhibit E - Forlando, Sr. Assistant Jones, Others, emails Jan 2011

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

Appellate Case No. 2013-00169

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are.....Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are...Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com
SC Bar #4501

Appellant, *pro se*

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I. The June 13 Orders violate the Due Process and First Amendment Rights of Appellant, Buchanan, Brown's heirs and others, and the Equal Protection rights of Brown's Incarcerated son Michael and others 37

II. The Attorney General's withdrawal, jeopardy to Brown's backup 1999 will, and the threat to the "I Feel Good" Foundation's royalty copyrights give Buchanan and Appellant Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust 42

III. The June 13 Orders promote fraud on the court by disregarding the Richland County Court's jurisdiction to complete the Wingate and FOIA suits; and preventing Appellant and Buchanan from demonstrating Tommie Rae was not Brown's spouse and the State/AG joined in or condoned material misrepresentations by Tommie Rae, Forlando and others. 43

Conclusion 45

Exhibit B

THE STATE OF SOUTH CAROLINA
IN THE Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2013-CP-02-1337

Adele J. Pope,.....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust;
Russell L. Bauknight, Individually, as former *Executor de son tort*, and in every
current and former fiduciary status claimed or held as to the Estate of James
Brown and the James Brown 2000 Irrevocable Trust,.....Respondents,

AND:

Robert L. Buchanan, Jr.,.....Interested Party.

INITIAL BRIEF OF APPELLANT ADELE J. POPE

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com
SC Bar #4501

Apellant, *pro se*

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 I. Dismissal of most relief sought in the complaint under Rule 12(b) SCRPC should not have been granted because the complaint supports causes of action to remove Bauknight; void his fiduciary appointments; require him to account; appoint an SA/ST for litigation and administration; assess Bauknight individually; void the Disallowance; and grant related relief requested by Appellant. . . 24

 II. The Court's failure to conduct hearings and dismissal of the action to remove Bauknight and grant related relief continue the State's violation of the Due Process and First Amendment rights of Brown's real heirs, Appellant and others, including devisees and beneficiaries, seeking to enforce the "I Feel Good" Trust. 30

 III. In addition to standing as Interested Persons and creditors, Appellant and Buchanan have special interest standing under Section 62-7-405 to enforce the "I Feel Good"Trust and for Appellant to serve as GAL *pro bono publico* for Michael and others, because of their experience; their interest; the Attorney General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule.. . . . 32

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Exhibit C

DNA & DIGNITY

(Proposed Plan for "I Feel Good" Foundation to Protect its Royalties for Needy Students)

1. The "I Feel Good" Foundation's Position and Protocol.

- a. James Brown died unmarried on December 25, 2006. [Toberoff, etc.]
- b. Termination rights agreements will be made only with DNA-proven or Presumed children who support James Brown's noble estate plan.
- c. Current candidates (subject to abandoning any claims) are:
 - a. DNA-Proven: 1. LaRhonda (daughters), 2. Jeanette, 3. Nicole;
 - b. First marriage: 4. Terry, 5. Larry, 6. Lisa;
 - c. Second marriage: 7. Deanna, 8. Yamma;

2. Offer - But do not require – Peeples DNA Protocol for 30 - 60 days.

DNA testing under the Estate's official Peeples DNA Protocol, paid for by the Estate, to be offered for 30-60 days to: 9. Michael (incarcerated), 10. James Curtis, 11. Tonya, 12. James B., 13. DOE Defendants identified as likely heirs by the GAL, Levenson Intestacy Suit.

3. Dignity & Reconciliation for Termination Rights Cooperation of Excluded Heirs.

After above 30-60-days, offer to the first six to accept of: La Rhonda, Jeanette, Nicole, Lisa and anyone passing Peeples DNA Protocol listed above, in exchange for agreement for lifetime termination rights cooperation:

1. Full recognition as heirs by the Estate and "I Feel Good" Foundation at a ceremony to be conducted at Brown's home estate in Beech Island.
2. [If possible] VIP Invitation to, and additional recognition, at the opening of South Carolina screening of "Get on Up!"
3. \$10,000 per year for life, effective 2011.

4. Offer Termination Rights Agreements to some Children Acknowledged in Will.

Make the offer set out above to the first two children acknowledged in the Will to accept – but with payment of \$50,000 per year for life, commencing upon execution of termination rights agreement and withdrawal of all claims against the Will, 2000 Trust and Estate.

5. If two Acknowledged Children do not accept, re-offer to all Excluded Heirs.

6. Consider "splitting heirs" and other available strategies to protect the Royalties for Needy Students as James Brown directed.

7. Update Protocol at death of each child, and as needed.¹

1

This proposal is consistent with the "Splitting Heirs" technique described in *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....* Also see: The Aspen Institute (supp. 2013). *The artist as philanthropist. strengthening the next generation of artist-endowed foundations.*

The Estate/2000 Trust's plan to protect its rights to more than 800 published and unpublished songs (the "Royalties") was started by Brown's original PR/Trustees in 2007. They established the Estate's official "Peoples DNA Protocol." Using the Peoples DNA Protocol, the Estate identified and officially acknowledged La Rhonda, Jeanette and Nicole. Others were excluded. Incarcerated son Michael's request for testing was interrupted by the AG's 2008 Settlement.

Buchanan & Pope continued the plan to protect Brown's Royalties. They consented to a March 8, 2008 Order of the Hon. Doyet A. Early, III which would have proceeded with the official Heirs determination in the Levenson Intestacy Suit although Brown had two valid Wills.

Four months later – and for nearly five years – the AG's 2008 Settlement stood as an impediment to a proper protection plan for the Royalties.

The completion of a properly-documented Heirs baseline during the probate process would have given the "I Feel Good" Foundation – and gives all charities who have been devised Copyrights -- maximum flexibility to:

1. Contract with the half, or half + 1 needed to protect the copyrights ("Splitting Heirs") –5 or so in the case of the "I Feel Good" Foundation
2. Avoid later costly federal litigation with a proper Heirs baseline.

A proper heirs determination was particularly important in this case because all fiduciaries, all children and others had overwhelming evidence that Brown died without a spouse. And his companion's child was not a presumed child. [He is the only claimed child born in the 22 years between Brown's vasectomy and death.. He has refused DNA testing under the Peoples Protocol for 7 years.] Yet the AG "spoke as one" with the two from August 2008 until May 2013. His appointee became their agent in four separate lawsuits. The AG's contract "stipulated" that both the companion and her son were heirs. The State/AG exempted companion's son from DNA testing under the Peoples DNA Protocol. The State/AG contracted to join them in attempting to defeat the interests of real heirs.

Since February 27, 2013 the Estate/"I Feel Good" Trust has been in a position to complete the Peoples DNA Protocol for non-presumed heirs and make Termination Agreements under the above, or a similar, plan. To do so will provide appropriate respect and recognition for all DNA-proven non-presumed children excluded by Brown.

It will also be good for the "I Feel Good" Foundation.

For under \$200,000 per year (and with almost no attorneys' fees), the above plan would have secured the "I Feel Good" Foundation's Royalties (about \$3 million a year) for needy students for decades. Starting in 2011. It still can.

To accomplish the same result the AG's 2008 agreement proposed to give away 52 ½% of the "I Feel Good" Foundation – about \$40 million at the time.

TOBEROFF & ASSOCIATES, P.C.

A PROFESSIONAL CORPORATION

Exhibit D

22337 PACIFIC COAST HIGHWAY #348

MALIBU, CALIFORNIA 90265

Tel: (310) 246-3333; Fax: (310) 246-3101

mtoberoff@toberoffandassociates.com

September 23, 2013

Via E-mail and U.S. Mail

Scott McDowell
Senior Vice President and
Head of Legal & Business Affairs
Warner/Chappell Music, Inc.
10585 Santa Monica Blvd.
Los Angeles, CA 90025

Re: James Brown/Terminations under the Copyright Act

Dear Mr. McDowell:

We represent James Brown's children, Terry L. Brown, Larhonda Waller, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Jeanette Mitchell Bellinger and Cinnamon Nicole Parris, and James Brown's grandchild, Sarah LaTonya Fegan a.k.a. Tonya Brown (collectively, the "Heirs"), who are believed to constitute all or a super-majority of James Brown's statutory heirs entitled to exercise termination rights under 17 U.S.C. §304. On the Heirs' behalf, we will be serving Warner/Chappell Music and others, in the near future, with statutory notices of termination regarding Mr. Brown's music.

The Heirs are informed and believe that Tomi Rae Hynie and James Brown, Jr., acting as James Brown's putative surviving spouse and child, respectively, have served purported notices of termination regarding his musical compositions (the "Tomi Rae Termination"). The Heirs are further informed and believe that the Tomi Rae Termination is being handled by a representative of the Estate of James Brown, despite the glaring conflicts of interest that this would appear to entail.

This letter is to notify Warner/Chappell Music that the Heirs vigorously contest the validity of the Tomi Rae Termination and the standing of Tomi Rae Hynie and James Brown, Jr. to serve any notices of termination under the Copyright Act regarding James Brown's music.

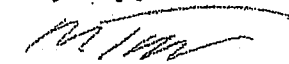
The Heirs' claim is based, without limitation, on the well-known fact that when Ms. Hynie purported to marry James Brown in December 2001 she was already married to Javed Ahmed (since 1997). The Heirs contend that this rendered her 2001 marriage void, and that the 2004 default judgment thereafter obtained by Ms. Hynie from a South Carolina family court, annulling her marriage to Mr. Ahmed, did not resuscitate Ms. Hynie's 2001 marriage to Mr. Brown pursuant to the recent on-point decision of the South Carolina Supreme Court in *Lukich v. Lukich*, 379 S.C. 589, 592 (2008) ("The question is whether the [2003] annulment order declaring Wife's first marriage void *ab initio* relates back so as to validate her purported 1985 marriage." "While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second [1985] 'marriage.'").

Furthermore, Ms. Hynie's default judgment in *Tomi Rae Hynie v. Javed Ahmed* has no claim or issue preclusion effect on the Heirs as they were not parties to that action, and, in any event, the purported findings of fact and conclusions of law in that default judgment have no issue preclusion effect because such issues do not appear to have been "actually litigated" on the merits. See *State v. Bacote*, 331 S.C. 328, 330-31 (1998) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation."). The Heirs' challenge to James Brown, Jr. is based, among other things, on his refusal to take a simple Court-supervised DNA test verifying that he is James Brown's child.

Please be further advised that these essential legal matters will be the subject of pending litigation in the South Carolina courts or in an alternative forum.

We hope to keep you well advised as this process marches towards a resolution. In the meantime, the Heirs and I look forward to an amicable relationship with Warner/Chappell Music regarding their statutory termination interests, and the future of James Brown's music.

Very truly yours,



Marc Toberoff

cc: Kelly Burnett via E-mail, Senior Director, Legal & Business Affairs
Warner/Chappell Music, Inc.

Exhibit E

Sonny Jones

From: Sonny Jones
Sent: Thursday, January 20, 2011 10:44 AM
To: Matt Bodman; DavidBell@davidbelllawfirm.com; JTrigg@KilpatrickStockton.com
Cc: FKingsmore@nexsenpruet.com; armedlin@sc.rr.com
Subject: Brown-Terry Brown Docs
Attachments: TB.ASSIGNMENT.PDF; TBCON.PDF

In order that you may have them in one email I have attached Terry Brown's Amendment and Confirmation to the ROFR and Terry Brown's Assignment to Forlando Brown.

Thanks.

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement) The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Bauknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.



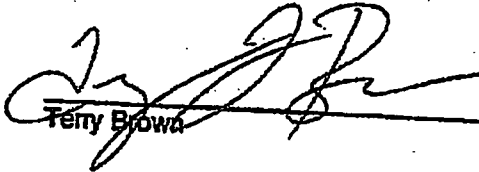
Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

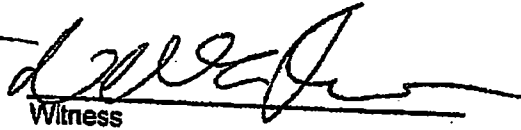
Georgia, Stephens County

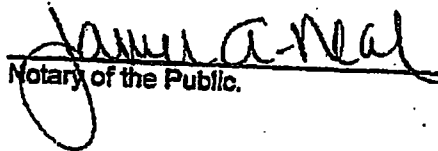
For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, Irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011

Sonny Jones

From: Sonny Jones
Sent: Wednesday, January 19, 2011 9:50 AM
To: Matt Bodman; louis@levensonlaw.com
Cc: FKingsmore@nexsenpruet.com; amedlin@sc.rr.com
Subject: Brown: Cox- Forlando Meeting-Wed January 19, 2011 @ Nexsen Pruet
Attachments: Terry Brown Assignment.PDF; Ppt0000002.ppt

Attached please find the assignment from Terry Brown to Forlando and a power point presentation sent late yesterday from Terry Cox.

The meeting, per the power point, w/ Russell is scheduled today(Wed) @ 2 PM. Please advise if you would like to be included per conference call or in person.

Thanks.

The ROFR Amendment and the Due Diligence Approach

January 19, 2011

Agenda

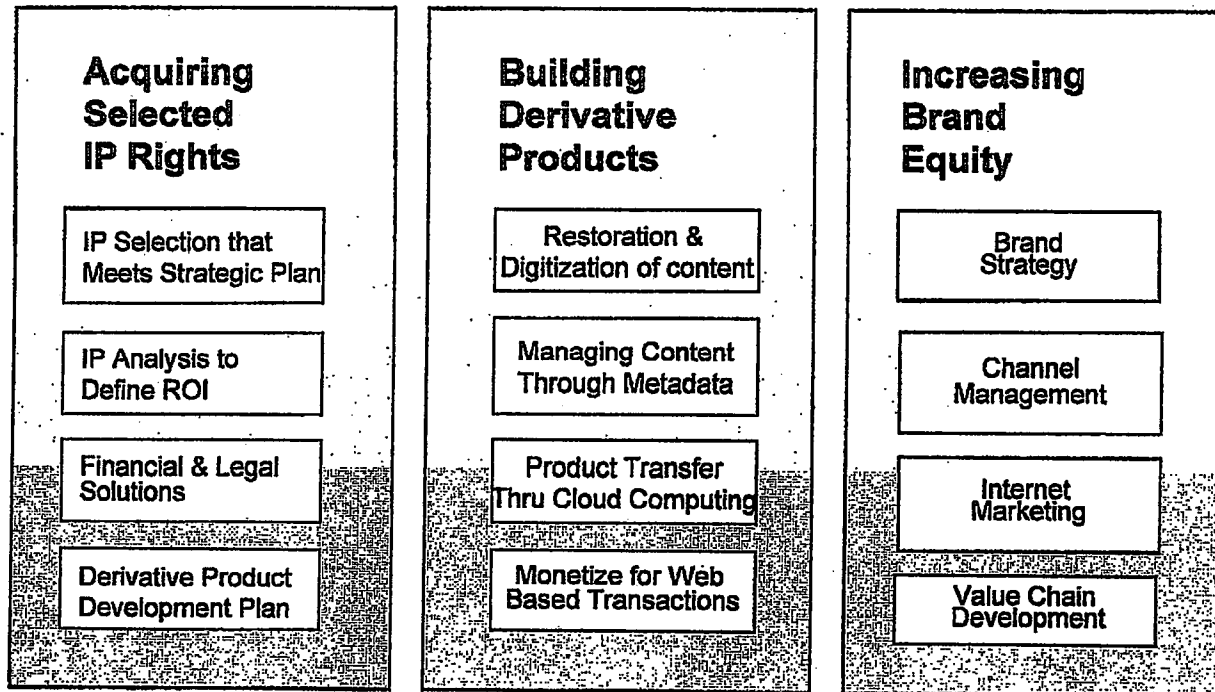
- The ROFR
- Our Assumptions
- Our Approach to Due Diligence
- Due Diligence Steps
- Due Diligence Structure

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Confidential

Newco: Provides value to its investors by: 1) providing a return from the ownership of derivative products (online video), and 2) the market value of an organization that has the capabilities for the scalability of derivative products. The following are proprietary capabilities of Newco.

Newco will be a virtual organization led by a strategic plan and supported by an infrastructure design to effectively utilizes contracted capabilities and technologies. Capital assets will be derivative products or value chain components.



**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court**

Appellate Case No. 2013-002582

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are.....Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are...Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

**APPELLANT'S REPLY TO BAUKNIGHT'S RETURN TO
MOTION TO HOLD IN ABEYANCE**

Appellant respectfully submits that the Return of Russell L. Bauknight ("Bauknight") to Appellant's Motion to Hold in Abeyance makes representations which are not supported in the record of the James Brown cases. Without detailing them, she objects to the all statements and conclusions not referenced and agreed to herein. Appellant craves reference to her motion, and supplements it as set out herein.

I. The requested abeyance will not cause unnecessary delay.

Appellant, more than anyone, wishes to bring to an appropriate end the destruction to her own career and reputation, and that of Robert L. Buchanan, Jr. ("Buchanan"), which has been their reward for carrying out their Court-appointed duty to the noble estate plan of James Brown.¹

Appellant has served *pro bono publico* in the Aiken County matters since that duty came to an end on May 8, 2013. James Richardson, Esquire, served *pro bono publico* as lead appellate counsel for almost four years in the *Wilson v. Dallas* appeal. Counsel Tressa Hayes, Esquire and James Bailey, Esquire were efficient and dedicated.

Putting the South Carolina Supreme Court in a position to save James Brown's "I Feel Good" Trust – which it did – was a high stakes operation. But it

1

Appellant has not been paid court-ordered payments of \$47,000 for her SA work in 2007, or approximately \$1.4 million – with interest accruing at the legal rate– Judge Early ordered that she be paid for her work, and that of her large staff, from November 20, 2007 until May 26, 2009. The only payment she has received from the Estate not reported on filed accountings with the Court in 2009 and earlier is a check for the costs awarded by the Supreme Court in *Wilson v. Dallas* 403 S.C. 411, 743 S.E.2d 746.

was not high priced.

The legal cost for defending for 4 ½ years against the State/AG's plan to give more than half of Brown's "I Feel Good" Foundation to a non-wife and about half of Brown's claimed children, including 7 days of circuit court hearings: about \$200,000.

The "I Feel Good" Foundation, now at over \$90 million, should be poised under IRS distribution guidelines to pay millions in scholarships to needy students each year. Brown's 7 designated grandchildren who ratify the estate plan should have been receiving their \$285,000 education trust payments since at least 2011.

Fair Termination Rights agreements under the Federal Copyright Act with the most cooperative half of Brown's *real* heirs – including incarcerated son Michael – should now be in place. The DNA & DIGNITY plan to identify non-presumed heirs which was interrupted by the AG in 2008, should have been completed². [See Exhibit A]

2

The Toberoff letter {Exhibit B} and the fight of David Bell, Esq. and a limited special administrator ("LSA") appointed by an *ex parte* order of the Probate Court on October 10, 2013 to prevent a GAL for incarcerated son Michael under Rule 17 (c) threaten damage both to Michael and to the "I Feel Good" Trust. They suggest Bauknight and the LSA are allowing Bell and others to siphon off the advantage of Termination Rights cooperation agreements the Estate/"I Feel Good" Trust should have secured by 2011 – but, at a minimum since February 27, 2013 – with Michael (subject to completing the Peeples DNA Protocol), Lisa, LaRhonda, Jeanette, Nicole, James Curtis (subject to the Peeples Protocol) and Tonya (subject to the Peeples Protocol). [These, alone, are the HALF necessary to protect the copyrights for decades.)

Both the LSA and Bell claim that Bell is Michael's lawyer, and insist that Michael does not need Appellant as his *pro bono publico* GAL. The impediments to this position

3

It has not happened.

Instead, Russell L. Bauknight is still representing non-wife Tommie Rae Hynie in four lawsuits. He is doing so despite her announced intention, with Louis Levenson, Esquire, on May 29, 2013, to dismember the "I Feel Good" Trust again with the same settlement.

include: Bell's fraud on multiple courts, including two material and false affidavits in the Forlando Federal Suit; Bell's conflicts in representing two parties with material opposite positions at the same time (Terry/Forlando); Bell's failure to make an appearance or seek *pro hac vice* status for Michael in the Hynie claims case, where the protection of Michael's heir status is critical; and Bell's protection of Terry in the Hynie claims case – but not Michael – after he claimed to be Michael's lawyer.

Michael called Appellant in an unsolicited call from prison in California AFTER Bell claimed to be his lawyer. He said he wanted to thank her for asking to be GAL and give her his prison number. Appellant declined to talk to him about the James Brown cases because of Bell's claim to be his lawyer, but advised Michael she would report the unsolicited call to Bell and the Court. She did so. Judge Early has declined to conduct a hearing on the GAL appointment, even though Michael has been in prison in CA and seeking DNA testing since 2007.

Bell also recently claimed to represent Lisa, Brown's daughter from his first marriage. Lisa was acknowledged in Brown's divorce agreement from Velma. Bell has not moved for either Lisa or Michael to intervene, or be served, in the Hynie proceeding; the James B. proceeding; or the Levenson Intestacy Suit.

Bell also claims to represent son Daryl, who testified on national television and started a blog to support the "I Feel Good" Trust. But Bell has not filed any notice or appearance or *pro hac vice* admission for Daryl in any case. Nor has he withdrawn Daryl's challenges to the Will/Trust filed by Levenson in late 2007.

Bell's history of dirty tricks includes filing six grievances in two states against Levenson in 2008, including claiming that Levenson forged his \$150,000 + 30% contingency contract with Forlando. Bell also filed two false affidavits in the Forlando Suit which kept Forlando's frivolous complaint alive for several years. In March 2009, after Terry joined the AG's settlement, Bell threatened Buchanan with a judicial grievance (Buchanan is a federal magistrate judge) if he did not resign immediately. Mr. Buchanan reported the letter to Judge Early.

There was no justification for the settlement. All of Brown's fiduciaries other than Mr. Bauknight, and all of the children who joined in the AG's settlement, know Ms. Hynie was not Brown's spouse. [See Exhibit B.] She did not control Brown's termination rights. Nor did they.

On June 13, 2013 The Honorable Doyet A. Early, III enjoined virtually everyone who supports the "I Feel Good" Trust from doing anything about the announced intention to dismember the "I Feel Good" Foundation.

The appeal of his extraordinary orders issued that day are the subject of appellate case No. 2013-00169. The initial brief in that appeal was filed February 21, 2014.

A second appeal, from Aiken County Case 2013-CP-02-1337 (now assigned appellate case number 2014-00250) addresses the summary dismissal of an action to remove Mr. Bauknight for cause based on his continuing service to Tommie Rae Hynie, and other acts.

The brief in that appeal was served on February 11, 2014.

Barring unexpected delay, the full record of these two cases will be in the hands of this Court within 60-90 days.

This is a short period of abeyance which might help save a \$90 million foundation for needy students.

II. Mr. Bauknight's representation that that "Ms. Pope's only personal interest in the Estate Litigation is her outstanding claim for fees..." overlooks five James Brown Estate matters, including three initiated by Mr. Bauknight against Appellant, and her Special Interest Standing under Section 62-7-405.

Mr. Bauknight asserts on page two of the Return:

Finally, Ms. Pope's only personal interest in the Estate litigation is her outstanding claim for fees, which has nothing to do with the orders on appeal and remains pending. [Ret., p. 2.Emphasis supplied.]

This statement overlooks that Appellant is involved in five pending lawsuits involving the Estate. In three, including two FOIA suits, the Estate, acting through Mr. Bauknight during his now-void appointment, initiated inappropriate action against Appellant. In the fourth, Mr. Bauknight's secret dealings have prolonged a frivolous suit which should have been over years ago³.

A brief description of four of the five cases follows:

1. The Forlando Federal Suit District Case No. 3:08-cv-00014-WOB:

Forlando sued the 2000 Trust on January 2, 2008 to enjoin it from taking any action until Brown's original trustees (the "Cannon Group") were reinstated.

3

The fifth is the subject of appellate case no. 2014-00250. Appellant was required to file Case 2013-CP-02-1337 because Mr. Bauknight, claiming authority under an *ex parte*, pre-remittitur Probate Court order appointing him SA, served Appellant on May 29, 2013 with a Notice of Disallowance and Notice of Impending Bar. Mr. Bauknight – who has not paid Appellant a dime of her court-ordered partial commission, and only paid Buchanan after extracting benefits for Hynie – asserted that Appellant, Buchanan, Hayes and Bailey were not entitled to be paid. He asserted that Appellant and Buchanan had improperly valued the James Brown assets — referring to his false felony claim.

The Notice of Impending Bar required Appellant to file suit. She did so on June 10, 2013 Under the Probate Code she included a request for all appropriate relief.

The June 13 Orders followed 3 days later. They are the subject of appellate case no 2013-00169.

Appellant respectfully urges the Court to await arrival of these briefs for a full understanding of their relation to this appeal.

Appellant and Buchanan have claims for damages and offset against Forlando's share of the 2000 Trust and Terry's former share of the Estate.

Forlando claimed Judge Early had illegally appointed Buchanan and Appellant, who ousted the innocent Cannon to get the \$5 million commission payable on Brown's \$100 million estate. He claimed they would help Ms. Hynie and not protect his \$285,000 education Trust.

Forlando was really a secret 39% owner of TJBL, seeking to buy the music empire.

In January 2009 Forlando's father Terry, also part of TJBL, joined the AG's settlement which destroyed Forlando's \$285,000 Trust.

From 2009 -2013 Forlando pretended to object to the AG's settlement while Terry supported it. Both were represented by David Bell, Esq. They said:

Terry/Bell told the Supreme Ct.
Hynie was Brown's spouse

Forlando/Bell told the Federal Ct.
Hynie was not Brown's spouse; knew it; and begged him to marry her.

Brown's music empire was worth \$4.7 million at death

The Bauknight value is "bogus." Offers of \$150 million were available in 2008.

Tommie Rae's son is Brown's son.

Tommie Rae's son is not Brown's son, and cannot be..

Tommie Rae & her son control the Estate's Termination Rights under the Federal Copyright Act.

Tommie Rae has no Copyright Rights.

On May 19, 2010 Bell, Bauknight and others secretly contracted with the law firm of Kenneth Wingate, Esq. ("Wingate") to sue Buchanan and Appellant for conducting the *Wilson v. Dallas* appeal and other claims.

In January 2011 the AG and Terry, with others, secretly amended the Legacy Trust and Terry's right of first refusal to buy Brown's music empire under the AG's settlement (the "ROFR"). Terry then gave his interest in the Estate and ROFR to Forlando.

In April 2012 Forlando's frivolous claims were dismissed. He and Judge William Bertelsman discussed his assets:

THE COURT: Well, do you have any assets, Mr. Brown?

MR. BROWN: I do not.

THE COURT... But you're going to pursue these counterclaims, but if he has no assets – You willing to give us a sworn financial statement?

MR. BROWN: Absolutely.

...
THE COURT: Do you stand to gain any inheritance under the settlement in the State Court?

MR. BROWN: Not unless my father were to pass away. [Hg.4/13/12, pp, 3,46]

In 2013 Mr. Bauknight claimed Forlando had done nothing wrong. He abandoned the 2000 Trust's claim for attorneys' fees for the 4-year prevention of a federal injunction which, among other things, could have stopped the defense of the AG's settlement and the *Wilson v. Dallas* appeal.

In 2013 the Federal Court declined to dismiss the 2000 Trust as a party.

By late 2013 Forlando and Bauknight's collusion appeared to include Bauknight's allowing Bell/Forlando to siphon off contract benefits the Estate/"I Feel Good" Trust should have tied up by 2011 with the HALF of Brown's *real* heirs not challenging the estate plans. If not stopped, this may damage the "I Feel Good" Trust for years.

In late 2013 the federal court make the Wingate Litigation Agreement public. Bauknight had been fighting release under FOIA since 2011.

Current Status of the Forlando Federal Suit: Bauknight still represents Terry/Forlando in the Wingate Suit. A hearing on Buchanan and Pope's counterclaims for Summary Judgment and offset against the Estate/2000 Trust shares of Forlando/formerly Terry is scheduled for March 19, 2014.

2. The Wingate Suit, Case 2010-CP-40-4900.

On May 19, 2010 Bauknight contracted to pay Wingate a 40% contingency to sue Buchanan and Appellant for the Estate,

Hynie, Terry Brown and others to stop the *Wilson v. Dallas* appeal.

The Attorney General (State/AG") and Bauknight as agent for the State/AG were named plaintiffs. It now appears neither Wingate nor Bauknight had legal authority to act for the State/AG or sue in its name.

Bauknight is also a Plaintiff as agent for Tommie Rae Hynie, her son James B. and Terry Brown.

The complaint asserts, among other things:

- a. Buchanan/Appellant should have accepted a \$100 million offer for Brown's music empire ⁴.

4

While suing Buchanan/Appellant for not accepting a 2007 \$100 million offer for the music empire, Mr. Bauknight and the State/AG told the Supreme Court there had been no offers and that the at-death value of the music empire was \$4.7 million.

The State/AG and Bauknight knew TJBL had made three \$90 - \$100 million letters of intent between October 2007 and March 2008. Sr. Assistant AG Jones had inquired about the first \$100 million offer on December 6, 2007. He expressed fear it would go away if not accepted. It did not.

Forlando testified in September 2008, the week the estate tax return was filed, that \$150 million offers were still available.

Mr. Bauknight claims Buchanan/Appellant had no basis for their \$84 million value of the music empire on the estate tax return. He claims they intentionally overvalued the assets by \$79 million to get a \$5 million commission. He made this false claim knowing that the \$84 million value was consistent with a valuation formula for the estate tax return presented without objection to Judge Early, the AG and others in November 2007 as follows

$$\begin{aligned} &\text{Value of Royalties and Publicity Rights} = \\ &12 \frac{1}{2} - 14 X (\text{annual Royalties} + \frac{1}{2} \text{ Road Revenues}) \end{aligned}$$

Royalties were \$3+ million annually and Road Revenues for 2003-2006 \$18 million.

Mr. Bauknight claimed his "appraisal," which he refuses to disclose despite the Probate Code Requirement to do so, is the first professional appraisal

A March 2006 Term Sheet, within the Estate records made public in 2007, however,

b. The false claim that Buchanan/Appellant improperly valued Brown's music empire, exposing Plaintiffs to unnecessary estate taxes.

c. The false claim that the Christie's sale was improper.⁵

shows that in 2006 a professional appraisal was made in connection with a proposed Royal Bank of Scotland loan. The professional appraisal, just months before Brown died, valued the Royalties --about half of the value of the music empire -- at \$42 million or higher. [For reason unrelated to value, the May 2006 Royal Bank of Scotland loan was cancelled just before closing. See Pullman litigation.]

Mr. Bauknight has attempted to secrete documents formerly made public by Order of the Hon. Doyet A. Early, III dated August 10, 2007. Additional details about the 2006 professional appraisal within the Estate records are in his possession.

5

The Grammy issue, like the valuation issue, was not considered by Judge Early. The sale was approved in three court orders. The Grammy was specifically listed in the Christie's Selection for Sale which Judge Early directed Buchanan and Appellant to sign on April 1, 2008. When former PR/Trustee Dallas asked the Court of Appeals to stop the sale, the Grammy was listed in the catalogue filed with the Court of Appeals. The sale was approved by the Court on July 14, 2008 -- just days before the sale. This was the third approval order.

Former Trustee Albert Dallas, Jacque Hollander, Forlando and others, interfered with, and chilled the Christie's sale. According to Forlando, certain family members -- feuding over other matters -- joined together to sabotage the sale.

Neither the AG nor family members asked to remove the Grammy or timely asked for any other item from the Christie's sale, even though family members and Hynie were given time to do so by Judge Early's first Order of February 20, 2008.

In the April 1, 2008 Order directing Buchanan and Appellant to sign the Consignment Agreement -- with the Grammy listed -- Judge Early found that the Levenson clients had interfered with the sale, but had not -- to date -- caused any damage. Because of the illiquidity of the estate, he directed that anyone interfering with the sale would be charged with costs and damage.

Nine days before the Christie's sale, in violation of the sale order, Dallas filed his motion to stop the sale. His counsel William Hammond made public statements intended to chill the sale.

A motion filed by the Academy which issues Grammys in New York objected to the sale of the Grammy. The Academy also made a similar filing to try to stop Stevie Wonder's Grammy sale, the second time it was sold. The Academy, which did not prohibit sale of Brown's Grammy when issued, uses these legal tactics to try to stop legal sales.

With Levenson present, Christie's legal counsel urged Buchanan and Appellant not to withdraw the Grammy, and to resist the Academy's filing. They assured that the sale was perfectly appropriate and legal. [But the cost of legal defense would have been paid from the sale proceeds. It was estimated to be about \$5,000.]

The filing of the Academy's motion did, however, allow the Estate/2000 Trust to withdraw the Grammy from the sale without a withdrawal penalty.

Based on all factors, Buchanan and Appellant made the decision to withdraw the Grammy, which had a sale estimate in the \$15,000 range, without penalty.

The Grammy was returned to the S.C. State Museum which, under the same orders which approved the Christie's sale, held many items of memorabilia for safekeeping during the pendency of the Will/Trust challenges.

There was no need to even respond to the filing, since the matter was moot. Yet the lawyer who filed the motion puffed on his blog that he had "stopped" the sale.

Forlando later confirmed that he, his father, and some of the aunts and uncles – fighting over many other issues – got together to sabotage the Christie's sale. That claim is consistent with the television appearance Deanna Thomas made the morning of the sale to try to chill it.

[Levenson had earlier asked that the Estate/2000 Trust pay for his clients' attendance at the sale. He was told that they would not object to their submitting a request for such payment after the sale.]

Forlando also said that family members had funds to purchase at the sale, but were directed by their attorneys not to do so.

The Estate's motion, filed in accordance with Judge Early's orders, for Dallas to pay the legal cost of interference with the Christie's sale, was filed on July 27, 2008. It has not been heard.

There was no complaint about the Christie's sale during the settlement hearing in 2009. The first complaint about the Christie's sale was raised by Wingate nearly two years after the sale in the Wingate Suit. This was remarkable because the AG, a Plaintiff

On May 18, 2012 Wingate/Bauknight moved to compel Buchanan's compliance with a "settlement."

On July 18 Wingate/Bauknight obtained an emergency order to stop the deposition of their witness Dallas.

On July 20, 2012 Dallas, violating the 2008 Gag Orders (unless void or expired) gave a lengthy sworn statement confirming that Hynie was not Brown's spouse; about the contents of Hynie's handwritten notes; about Mr. Brown's vasectomy and other issues; and about a 2006 3-way conversation he, James Brown and Hynie had about their not being married.

In the summer of 2012 Wingate/Bauknight moved to strike Appellant's offers to Brown's children and grandchildren which, if accepted, might have prevented the *Wilson v. Dallas* decision. Wingate refused to appoint a GAL for the minors.

In November and December 2012 Bauknight secretly paid Wingate \$563,000 from the Estate. The \$563,000 was in addition to Wingate's 40% contingency.

In May 2013 Wingate wrote the Honorable L. Casey Manning referencing the first *Wilson v. Dallas* decision which was replaced on May 8 as follows:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without

in the Wingate Suit, had asked the South Carolina Court of Appeal to approve the Christie's sale in July 2008 during the Dallas interference. It was also remarkable, because Mr. Bauknight claimed loss on the sale even though the Christie's net proceeds exceeded by tens of thousands of dollars the value he reported on the I&A for ALL of Brown's tangible personal property. The Christie's sale involved only about 350 items of the thousands of pieces of tangible personal property, automobiles, furs and jewelry and memorabilia owned by Brown and his wholly-owned company JBE, Inc. [The Grammy was Item 168]. Many of the pieces not sold were placed for safekeeping at the Augusta Museum of History; the I. P. Stanback Museum at S.C. State; the S.C. State Museum; and the Lucy Craft Laney Museum. More than 40 boxes of music-related items were also transferred by secure transport to a sound storage facility.

any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.

...Therefore, Case 4900 Plaintiffs and Proposed FOIA Interveners respectfully request that [the Wingate/FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.] [Ltr. Gende 5/12/13]

Current Status of the Wingate Suit: As of February 26, 2014:

1. Bauknight still represents Hynie and her minor son;
2. Bauknight still represents Terry/Forlando;
3. Bauknight still represents others who are challenging the estate plans of James Brown;
- 4.. Bauknight still claims to speak on behalf of the AG
5. No hearing has been held since Wingate's request.

3. FOIA #1 - In this FOIA Suit, filed August 3, 2011 Appellant seeks a signed copy, with amendments, of the Legacy Trust and the AG's documents related to the Bauknight \$4.7 million appraisal.

The Legacy Trust is one of the Plaintiffs who sued Buchanan and Appellant in the Wingate Suit.

In the fall of 2011, Bauknight, for Terry, Hynie and others, moved to intervene and stop release of these public documents.

In 2012, at the request of AG Wilson and Bauknight, FOIA #1 was moved from Newberry County to Richland County.

In 2013 Wingate/Bauknight asked The Honorable L. Casey Manning to delay FOIA #1 for what may be years.

Current Status of FOIA #1 . As of February 26, 2014

- a. Bauknight still represents Hynie and others in FOIA #1.
- b. No hearing has been held.

4. FOIA #2 - In this FOIA Suit, filed August 10, 2011 Appellant sought a signed copy of the public Wingate Litigation Retention

Agreement under which the State/AG sued Buchanan and Appellant in the 2010 Wingate Suit.

Appellant sought the authorization, if any, for Bauknight to sue Buchanan and Appellant as agent for the State/AG.

In the fall of 2011 Bauknight, for Hynie, Terry and others, moved to intervene and seek sanctions against Appellant.

Current Status of FOIA #2 .

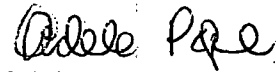
1. Bauknight still represents the Estate, Hynie and others.
2. Bauknight is still trying to intervene and stop FOIA compliance.
3. No hearing has been held.

Appellant's Special Interest status under Section 62-7-405, fully briefed in other cases, is a critical reason why the June 13 Orders should not have enjoined her; and why she has a direct Special Interest Status in this case, as well as status as a creditor and Interested Person. Her pending October 2013 application to be GAL for the incarcerated Michael is another basis for her standing. Bauknight failed to serve either Appellant or Michael with the petition which led to his appointment, which is the subject of this appeal.

CONCLUSION

The matter, if not consolidated with appellate case no. 2013-00169, should be held in abeyance for review of the full record in that case and in appellate case no. 2014-00250.

Respectfully submitted,



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Attorney for Appellants

February 27, 2014

List of Exhibits

Exhibit A - DNA & DIGNITY

Exhibit B - Ltr. of Mr. Toberoff

DNA & DIGNITY

(Proposed Plan for "I Feel Good" Foundation to Protect its Royalties for Needy Students)

1. The "I Feel Good" Foundation's Position and Protocol.

- a. James Brown died unmarried on December 25, 2006. [Toberoff, etc.]
- b. Termination rights agreements will be made only with DNA-proven or Presumed children who support James Brown's noble estate plan.
- c. Current candidates (subject to abandoning any claims) are:
 - a. DNA-Proven: 1. LaRhonda (daughters), 2. Jeanette, 3. Nicole;
 - b. First marriage: 4. Terry, 5. Larry, 6. Lisa;
 - c. Second marriage: 7. Deanna, 8. Yamma;

2. Offer - But do not require – Peeples DNA Protocol for 30 - 60 days.

DNA testing under the Estate's official Peeples DNA Protocol, paid for by the Estate, to be offered for 30-60 days to: 9. Michael (incarcerated), 10. James Curtis, 11. Tonya, 12. James B., 13. DOE Defendants identified as likely heirs by the GAL, Levenson Intestacy Suit.

3. Dignity & Reconciliation for Termination Rights Cooperation of Excluded Heirs.

After above 30-60-days, offer to the first six to accept of: La Rhonda, Jeanette, Nicole, Lisa and anyone passing Peeples DNA Protocol listed above, in exchange for agreement for lifetime termination rights cooperation:

1. Full recognition as heirs by the Estate and "I Feel Good" Foundation at a ceremony to be conducted at Brown's home estate in Beech Island.
2. [If possible] VIP Invitation to, and additional recognition, at the opening of South Carolina screening of "Get on Up!"
3. \$10,000 per year for life, effective 2011.

4. Offer Termination Rights Agreements to some Children Acknowledged in Will.

Make the offer set out above to the first two children acknowledged in the Will to accept – but with payment of \$50,000 per year for life, commencing upon execution of termination rights agreement and withdrawal of all claims against the Will, 2000 Trust and Estate.

5. If two Acknowledged Children do not accept, re-offer to all Excluded Heirs.

6. Consider "splitting heirs" and other available strategies to protect the Royalties for Needy Students as James Brown directed.

7. Update Protocol at death of each child, and as needed.¹

¹ This proposal is consistent with the "Splitting Heirs" technique described in *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....* Also see: The Aspen Institute (supp. 2013). *The artist as philanthropist. strengthening the next generation of artist-endowed foundations.*

The Estate/2000 Trust's plan to protect its rights to more than 800 published and unpublished songs (the "Royalties") was started by Brown's original PR/Trustees in 2007. They established the Estate's official "Peoples DNA Protocol." Using the Peoples DNA Protocol, the Estate identified and officially acknowledged La Rhonda, Jeanette and Nicole. Others were excluded. Incarcerated son Michael's request for testing was interrupted by the AG's 2008 Settlement.

Buchanan & Pope continued the plan to protect Brown's Royalties. They consented to a March 8, 2008 Order of the Hon. Doyet A. Early, III which would have proceeded with the official Heirs determination in the Levenson Intestacy Suit although Brown had two valid Wills.

Four months later – and for nearly five years – the AG's 2008 Settlement stood as an impediment to a proper protection plan for the Royalties.

The completion of a properly-documented Heirs baseline during the probate process would have given the "I Feel Good" Foundation – and gives all charities who have been devised Copyrights – maximum flexibility to:

1. Contract with the half, or half + 1 needed to protect the copyrights ("Splitting Heirs") –5 or so in the case of the "I Feel Good" Foundation
2. Avoid later costly federal litigation with a proper Heirs baseline.

A proper heirs determination was particularly important in this case because all fiduciaries, all children and others had overwhelming evidence that Brown died without a spouse. And his companion's child was not a presumed child. [He is the only claimed child born in the 22 years between Brown's vasectomy and death.. He has refused DNA testing under the Peoples Protocol for 7 years.] Yet the AG "spoke as one" with the two from August 2008 until May 2013. His appointee became their agent in four separate lawsuits. The AG's contract "stipulated" that both the companion and her son were heirs. The State/AG exempted companion's son from DNA testing under the Peoples DNA Protocol. The State/AG contracted to join them in attempting to defeat the interests of real heirs.

Since February 27, 2013 the Estate/"I Feel Good" Trust has been in a position to complete the Peoples DNA Protocol for non-presumed heirs and make Termination Agreements under the above, or a similar, plan. To do so will provide appropriate respect and recognition for all DNA-proven non-presumed children excluded by Brown.

It will also be good for the "I Feel Good" Foundation.

For under \$200,000 per year (and with almost no attorneys' fees), the above plan would have secured the "I Feel Good" Foundation's Royalties (about \$3 million a year) for needy students for decades. Starting in 2011. It still can.

To accomplish the same result the AG's 2008 agreement proposed to give away 52 ½% of the "I Feel Good" Foundation – about \$40 million at the time.

TOBEROFF & ASSOCIATES, P.C.

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mtoberoff@toberoffandassociates.com

September 23, 2013

Via E-mail and U.S. Mail

Scott McDowell
Senior Vice President and
Head of Legal & Business Affairs
Warner/Chappell Music, Inc.
10585 Santa Monica Blvd.
Los Angeles, CA 90025

Re: James Brown/Terminations under the Copyright Act

Dear Mr. McDowell:

We represent James Brown's children, Terry L. Brown, Larhonda Waller, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Jeanette Mitchell Bellinger and Cinnamon Nicole Parris, and James Brown's grandchild, Sarah LaTonya Fegan a.k.a. Tonya Brown (collectively, the "Heirs"), who are believed to constitute all or a super-majority of James Brown's statutory heirs entitled to exercise termination rights under 17 U.S.C. §304. On the Heirs' behalf, we will be serving Warner/Chappell Music and others, in the near future, with statutory notices of termination regarding Mr. Brown's music.

The Heirs are informed and believe that Tomi Rae Hynie and James Brown, Jr., acting as James Brown's putative surviving spouse and child, respectively, have served purported notices of termination regarding his musical compositions (the "Tomi Rae Termination"). The Heirs are further informed and believe that the Tomi Rae Termination is being handled by a representative of the Estate of James Brown, despite the glaring conflicts of interest that this would appear to entail.

This letter is to notify Warner/Chappell Music that the Heirs vigorously contest the validity of the Tomi Rae Termination and the standing of Tomi Rae Hynie and James Brown, Jr. to serve any notices of termination under the Copyright Act regarding James Brown's music.

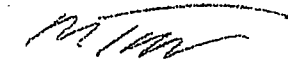
The Heirs' claim is based, without limitation, on the well-known fact that when Ms. Hynie purported to marry James Brown in December 2001 she was already married to Javed Ahmed (since 1997). The Heirs contend that this rendered her 2001 marriage void, and that the 2004 default judgment thereafter obtained by Ms. Hynie from a South Carolina family court, annulling her marriage to Mr. Ahmed, did not resuscitate Ms. Hynie's 2001 marriage to Mr. Brown pursuant to the recent on-point decision of the South Carolina Supreme Court in *Lukich v. Lukich*, 379 S.C. 589, 592 (2008) ("The question is whether the [2003] annulment order declaring Wife's first marriage void *ab initio* relates back so as to validate her purported 1985 marriage." "While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second [1985] 'marriage.'").

Furthermore, Ms. Hynie's default judgment in *Tomi Rae Hynie v. Javed Ahmed* has no claim or issue preclusion effect on the Heirs as they were not parties to that action, and, in any event, the purported findings of fact and conclusions of law in that default judgment have no issue preclusion effect because such issues do not appear to have been "actually litigated" on the merits. See *State v. Bacote*, 331 S.C. 328, 330-31 (1998) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation."). The Heirs' challenge to James Brown, Jr. is based, among other things, on his refusal to take a simple Court-supervised DNA test verifying that he is James Brown's child.

Please be further advised that these essential legal matters will be the subject of pending litigation in the South Carolina courts or in an alternative forum.

We hope to keep you well advised as this process marches towards a resolution. In the meantime, the Heirs and I look forward to an amicable relationship with Warner/Chappell Music regarding their statutory termination interests, and the future of James Brown's music.

Very truly yours,



Marc Tobéroff

cc: Kelly Burnett via E-mail, Senior Director, Legal & Business Affairs
Warner/Chappell Music, Inc.