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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SEP 15 2015

G. Thomas Cooper, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2013-001880

City of Columbia.....Appellant,

v.


George S. Glassmeyer.....Respondent.

APPELLANT'S PETITION FOR REHEARING

Appellant hereby petitions this Court for rehearing of the attorney fee award only as issued in its opinion filed September 2, 2015. This Petition is submitted pursuant to Rule 221(a), SCACR. For the reasons set forth in the memorandum in support filed herewith, it is respectfully submitted that in affirming the trial court award of attorney fees, the opinion issued by this Court overlooks material facts and misapplies the law of this State.

NICKLES LAW FIRM, LLC

By:



W. Allen Nickles, III, S.C. Bar #4226  
1122 Lady Street, Suite 610  
Columbia, South Carolina 29201  
(803) 779-8080  
[wanickles@nickleslaw.com](mailto:wanickles@nickleslaw.com)

September 15, 2015  
Columbia, South Carolina

Attorneys for Appellant

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPELLANT’S MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING**

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**PROCEDURAL POSTURE**

In an opinion filed September 2, 2015, this Court reversed in part and affirmed in part the decision of the Honorable G. Thomas Cooper, Jr., Circuit Court Judge. For the following reasons, the opinion reflects a misapplication of controlling principles of law in awarding Respondent full attorney fees.

**FACTUAL BACKGROUND**

On January 14, 2013, Respondent George S. Glassmeyer (“Glassmeyer”) submitted a FOIA request to Appellant City of Columbia (“City”) seeking “all materials related to not fewer than the final three applicants for the most recent vacancy announcement for the position of City Manager . . .” (R. p. 21) Glassmeyer was one of several parties seeking records relating to the City Manager finalists. The City responded to Glassmeyer and all other requesting parties by providing available materials with the

following redactions: (a) home addresses; (b) driver's license information; (c) personal telephone and emails of applicants and references; (d) salaries other than public employees in South Carolina of \$50,000 or more; and (e) personal reasons for leaving other employment. (R. pp. 109-111)

By letter dated January 24, 2013, Glassmeyer demanded all redacted information including home and email addresses, telephone numbers and driver's license information. (R. p. 56) The City responded to this request indicating that it would not release the redacted materials. (R. p. 57)

On March 8, 2013, Glassmeyer filed a non-jury complaint seeking a declaration that he is entitled to all material redacted by the City, an injunction prohibiting the City from withholding the redacted information, attorney fees and costs. (Complaint ¶¶ 15-17; R. p. 19) Before filing its answer, the City's attorney wrote to Glassmeyer's counsel, further explaining the basis for redaction and offering counsel the opportunity to review unredacted application materials. (R. p. 115) Glassmeyer rejected this offer and the City filed an answer on April 1, 2013.

Both parties filed motions for summary judgment. The City provided the trial judge all unredacted materials for *in camera* review. The motions were heard on June 6, 2013 by the Honorable G. Thomas Cooper, Jr. By order filed June 19, 2013, Judge Cooper granted Glassmeyer's motion for summary judgment.<sup>1</sup> (R. p. 1)

On July 16, 2013, the City filed a motion for a new hearing and reconsideration. On July 19, 2013, Judge Cooper denied this motion. (R. p. 12) On August 5, 2013, Glassmeyer submitted an affidavit and proposed order in support of attorney fees and

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<sup>1</sup>Glassmeyer conceded that state law required withholding of driver's license numbers and restrictions. (R. p. 2, fn. 1)

costs in the amount of \$12,655.01. (R. pp. 133-149) On August 14, 2013 the City filed a memorandum opposing the requested attorney fees. (R. pp. 150-153) On August 15, 2013, Glassmeyer submitted a supplemental affidavit in support of attorney fees. (R. pp. 154-156) On August 27, 2013, Judge Cooper issued an order awarding Glassmeyer attorney fees and costs in the amount of \$11,185.01. (R. pp. 13-15) This appeal followed.

By order filed September 2, 2015, this Court found that the trial court erred in holding that FOIA compelled disclosure of home addresses, personal telephone numbers and personal email addresses for applicants to the position of City Manager. Despite this finding, the opinion affirmed the attorney fee award issued by the trial court. The City now seeks reconsideration of that portion of the opinion addressing attorney fees.

### **LEGAL ARGUMENT**

**1. The trial court order awarding attorney fees does not demonstrate the required exercise of discretion.**

The trial court awarded Glassmeyer's requested attorney fees and costs with the exception of \$1,407.00. Attorney fees are available under FOIA and may be awarded within the sound discretion of the trial judge. S.C. Code Ann. § 30-4-100(b) However, Glassmeyer conceded at the summary judgment hearing that his repeated demand for driver's license information was not supportable under FOIA. (R. p. 2) Additionally, the trial court order awarding attorney fees does not provide a basis for determining "how" the trial judge exercised discretion as required by Burton v. York County Sherriff's Dept., 358 S.C. 339, 346 S.E.2d 888 (Ct. App. 2004) (R. pp. 13-15) This Court affirmed the attorney fee award in total despite finding that Glassmeyer has no statutory right to withheld personal information.

At a minimum, a court awarding attorney fees must determine if the fees requested are “reasonable.” Despite this obligation, the trial court offered no rationale for its award apart from erroneously finding Glassmeyer was entitled to personal and private information relating to finalists for the city manager position. Because the award of attorney fees by the trial court is not deserving of the deference conferred on appeal, the amount affirmed should be reconsidered.

**2. This Court failed to determine the “appropriate portion” of requested attorney fees subject to award.**

In a letter dated March 27, 2013, the City responded to Glassmeyer’s complaints about withholding personal information and failing to provide an adequate explanation for redacting information relating to city manager finalists. In this letter, counsel for the City provided specific reasons and offered Glassmeyer’s attorney a review all **unredacted** applications. (R. p. 115) Glassmeyer refused this offer, resulting in extensive litigation and the decision by this Court that redactions of personal information exercised by the City were lawful.

Despite finding that the City acted legally in withholding home addresses, personal telephone numbers, and email addresses of applicants, the Court did not independently determine the portion of the attorney fee award applicable to Glassmeyer’s **unsuccessful** efforts to obtain this information. Instead, the Court affirmed the “discretion” exercised below.

As noted in the opinion, if a FOIA request prevails in part, “the court may in its discretion award [the requester] reasonable attorney fees or an appropriate portion thereof.” *quoting* S.C. Code Ann. § 30-4-100(b). An exercise of discretion, however, requires more than a mere designation of the prevailing party. Instead, the reviewing

court must determine the extent to which the party prevailed and the attorney fees associated with successful prosecution. Sloan v. Friends of the Hunley, Inc., 393 S.C. 152, 158-159, 711 S.E.2d 895, 898 (2011) (reducing attorney fee award to eliminate time following production of documents)

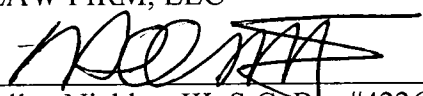
Of 49.4 attorney hours claimed by Glassmeyer's counsel, 37.3 or 75.5% were incurred after rejecting the City's offer of March 27, 2013. (R. pp. 140-149) In this context, the Court failed to exercise its responsibility to assure that the award of attorney fees reflects an "appropriate portion" of fees attributable to the partial relief granted. Because the record contains detailed attorney fee entries, remand is not necessary to undertake this responsibility. Sloan, *supra*.

#### **CONCLUSION**

For the reasons stated above, Appellant requests that this Court reconsider its opinion filed September 2, 2015.

NICKLES LAW FIRM, LLC

By: \_\_\_\_\_

  
W. Allen Nickles, III, S.C. Bar #4226  
1122 Lady Street, Suite 610  
Columbia, South Carolina 29201  
(803) 779-8080  
[wanickles@nickleslaw.com](mailto:wanickles@nickleslaw.com)

*Attorneys for Appellant*

September 15, 2015  
Columbia, South Carolina

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No.: 2013-CP-40-01450

City of Columbia.....Appellant.

v.

George S. Glassmeyer.....Respondent.

CERTIFICATE OF SERVICE

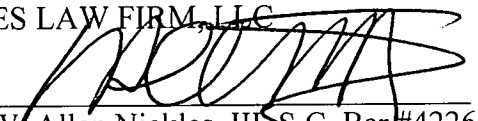
The undersigned hereby certifies that he has served the foregoing Petition for Rehearing and Memorandum in Support of Petition for Rehearing by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Kirby D. Shealy, III, Esquire  
Lyndey Zwing, Esquire  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, South Carolina 29201

This 15<sup>th</sup> day of September, 2015.

NICKLES LAW FIRM, LLC

By: \_\_\_\_\_

  
W. Allen Nickles, III, S.C. Bar #4226  
1519 Richland Street  
Columbia, South Carolina 29201  
(803) 779-8080  
[wanickles@nickleslaw.com](mailto:wanickles@nickleslaw.com)

Attorney for Appellant

NICKLES LAW FIRM, LLC  
- ATTORNEYS AT LAW -  
1122 Lady Street, Suite 610  
Columbia, South Carolina 29201

W. Allen Nickles, III

Telephone: (803) 779-8080  
Facsimile: (803) 256-1816  
Email: wanickles@nickleslaw.com

September 15, 2014

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SEP 15 2015

SC Court of Appeals

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**Re: George Glassmeyer v. City of Columbia  
Appellate Case No.: 2013-001880**

Dear Ms. Kitchings:

Enclosed for filing, please find Appellant's Petition for Rehearing, Memorandum in Support and Certificate of Service in the above matter. A check in the amount of \$25.00 for the filing fee is also enclosed. Please file the originals and required copies and return the extra, clocked-in copies with the bearer. Thank you for your cooperation and assistance in this matter.

Sincerely,



W. Allen Nickles, III

WAN/pfb  
Enclosures  
cc: Kirby D. Shealy, Esquire  
Lyndey Zwing, Esquire  
File #13-207