THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 07-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 40-CP-16-0332
Appellant Case No. 2013-001461

Ex Parte: Douglas N.Truslow, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

James Anasti, Plaintiff,

v.

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

And

Ex Parte: Desa Ballard, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

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

v.

Estate of Hugh S. Thompson, Defendant.

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APPELLANT'S FINAL BRIEF

James M. Griffin
Ariail E. King
Lewis, Babcock & Griffin, L.L.P.
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANT

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Statement of the Case

This appeal involves two separate cases in two different counties. James Anasti v. Lance Wilson et al. ("the Anasti case") was a case that originated in Richland County Circuit Court. Pee Dee Health Care v. Estate of Thompson ("the Thompson case") challenged the denial of a probate claim and was filed in Florence County Circuit Court. Appellant Tony R. Megna served as counsel for Defendant Gina Anasti in the Richland case and as counsel for Plaintiff Pee Dee Health Care ("Pee Dee") in the Florence case.

RICHLAND/ANASTI CASE

In Anasti, attorney Doug Truslow ("Truslow") brought suit on behalf of his client, James Anasti, against several defendants, including Appellant's client Gina Lee. (R. 90-119). The Circuit Court granted summary judgment to Anasti, and Gina Lee, though Appellant appealed to this Court.[1] After the Court of Appeals dismissed Gina Lee's appeals, Truslow filed a Motion in this Court seeking sanctions against Appellant. (R. 368-420). The attachments to the Motion for sanctions indicates that Truslow conferred with attorney Desa Ballard on the matter starting in 2008 and conferred with attorneys and parties in the Florence litigation (Jay James and Rene Josey.) Id. Truslow also conferred with attorneys (Celeste Jones and Bobby Stepp) that are representing parties in other litigation in which Appellant and Pee Dee are involved. Id. The Court of Appeals denied Truslow's motion for sanctions. (R. 64-66).

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1 Gina Lee actually appealed two orders of the Circuit Court which were consolidated for appeal. She also filed for Bankruptcy which resulted in a stay of the appeal for a short period.

The Anasti appeal was remitted to the Circuit Court on October 7, 2011. (R. 72). On November 22, 2011, Truslow filed a motion for sanctions against Appellant in the Circuit Court. (R. 441-443). In this motion, Truslow sought damages and sanctions against Appellant that were expected to exceed $500,000.00. Id. Truslow requested a status conference as to the motion where he indicated that he planned to call several witnesses as to the amount of damages: Desa Ballard, Rene Josey, Celeste Jones, and Bobby Stepp. (R.1181-1183; 241-260). The Honorable James R. Barber found that Truslow should be limited to two or three witnesses. Judge Barber did not impose any other limitations.

Following the status conference, Appellant served 11 interrogatories and 13 requests for production on Truslow and noticed witness depositions, in order to determine the specific damages that Truslow claimed amounted to $500,000.00. Truslow moved to quash the discovery requests and for sanctions. (R. 490-508 and R. 441-443).

The matter was assigned to the Honorable J. Michael Baxley, along with the Thompson case (which is discussed below). (R. 1198-1216). Judge Baxley's stated intention was to hold a consolidated hearing, and he also found that no live testimony was necessary. Id. Instead, Judge Baxley requested that any necessary evidence be presented by affidavit. Id.

Judge Baxley held a hearing on May 16, 2012 (R. 261-313). Appellant, through his counsel, submitted a Memorandum in opposition to the sanctions. (R. 818-1029). Judge Baxley heard arguments of counsel, but no witnesses testimony was taken. (R. 261-313). Appellant also submitted a supplemental memorandum after the hearing (R. 1030-1054).

By order dated February 13, 2013, the Circuit Court awarded Truslow $31,842.39 in fees and costs. (R. 90-119).[2] Appellant filed a motion to alter to amend, which was denied on June 12, 2013. (R. 1065-1071; 120-127). This appeal followed.

FLORENCE/THOMPSON CASE

In the Thompson case, Pee Dee sought to recover reimbursement for losses created by the actions of the Decedent, Hugh Thompson, while he was employed by Pee Dee.[3] The Defendant Estate was originally represented by attorney Jay James.4 Mr. James then associated attorney Rene Josey of Turner Padget Graham and Laney, P.A. However, Mr. Josey's partner, Brad Hylton, had been representing Pee Dee on a workers' compensation case that had been ongoing since 1994. Pee Dee notified Mr. Josey of the conflict and refused to waive it. Ultimately, Turner Padget unilaterally withdrew from representation in Pee Dee's worker's compensation case, and continued representing the Defendant Estate in the Florence case. Pee Dee sought disqualification of Josey while the Thompson case

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2 On July 26, 2012, Judge Baxley issued a preliminary ruling in a letter to counsel, in which he not only granted the motions of Truslow and Ballard, but sua sponte found that Appellant had violated a court order which warranted additional sanctions of thirty days in jail. (R. 1298-1302). After objection by Appellant's counsel, Judge Baxley recognized that due process required that Appellant be given a hearing on that issue. (R. 314-339).

3 After Thompson left Pee Dee's employment, Pee Dee was notified by Medicare that it owed more than $200,000 for "overpayments" because Thompson, who had been suspended from participation in the program at one point, had not been reinstated by the Medicare Office at the time the Medicare payments for Thompson's services had been made.

4 These facts are drawn from the appeal of Pee Dee Health Care, P.A., v. Estate of Hugh Thompson, 10-CP-16-0332, which the appellant there moved this Court, on August 24, 2011, to disqualify Mr. Josey and his firm (SR. 58-72). Appellant has not included all of the Record on Appeal from that case but for any records not so included, the Court can take judicial notice of them. *See*, Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct.App.1984). ("A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.")

was on appeal, but ultimately, the Court of Appeals refused to disqualify Josey from representing that defendant.

The Defendant Estate moved to disqualify Mr. Megna on the grounds that he was a necessary witness.[5] The Circuit Court granted the Motion by Order dated April 15, 2011, but provided an exception that Appellant would be permitted to argue the pending Motion for Summary Judgment. (R. 55-63). On May 2, 2011, Appellant filed a Motion to Alter or Amend the order of disqualification under Rule 59(e), SCRCP. (R 67). Upon denial of that Motion (R. 67-68), Appellant filed a Notice of Appeal of the disqualification. While that appeal was pending, the Circuit Court granted the Defendant Estate's Motion for Summary Judgment. Appellant filed a Motion to Alter or Amend the summary judgment order on behalf of Pee Dee. The Court denied the motion and Pee Dee appealed that order.[6]

In 2010, while the Thompson case was pending and Anasti was on appeal, Appellant contacted Desa Ballard regarding representation of himself, Pee Dee, and others in litigation arising out of Lake City, South Carolina (the "Lake City litigation") (R. 1165-1167). On October 15, 2010, Ballard's partner sent Appellant an email, indicating that the packet of information he sent was under review by Ballard and indicated their offer to represent Appellant and others for an hourly fee. Id. Ballard did not disclose at that time that she had been working with Truslow on the Anasti case, and on matters directly adverse to Appellant, and that as a part of that case, Truslow and Ballard had conferred with Rene

5 Appellant is the CEO of Pee Dee.

6 On July 3, 2013, this Court issued an unpublished opinion on both of those appeals (as well as a third appeal) that had been consolidated for purposes of oral argument. The Opinion declined to reverse the Circuit Court's orders. Appellant intends to file a petition for certiorari on the disqualification issue.

Josey and Jay James in the Thompson case (as well as Celeste Jones and Bobby Stepp in the Lake City litigation), whose interests were adverse to Pee Dee. Id.

On May 9, 2011, Ballard provided an affidavit to Truslow in the Anasti case, for Truslow's Motion for Sanctions filed in the Court of Appeals. (SR. 81-83). It was only at this time that Appellant learned of Ballard's involvement with Truslow (and others). On July 27, 2011, Appellant issued a subpoena, under the Thompson caption, to Ballard requesting certain documentation to determine the context of her conversations with Rene Josey and other attorneys that were adverse to Appellant and/or Pee Dee in the Thompson case and in the Lake City litigation. (R. 424-433). Ballard filed an objection and moved for sanctions. (R. 436-440).

On August 12, 2011, Judge Baxley denied Appellant's Motion to alter or amend the disqualification. Judge Baxley also considered Ballard's Motion to Quash and granted it, but did not address sanctions. Appellant appealed the disqualification issue. However, Ballard did not cross appeal, or file a Rule 59(e) motion regarding the Circuit Court's failure to award sanctions.

Ballard later sought a hearing in the Circuit Court on her motion for sanctions. This matter was also assigned to Judge Baxley. (R. 1198-1216). The hearing on Ballard's motion (as well as the hearing on Truslow's motion in the Anasti case) took place on May 15, 2012. (R. 261-313). Appellant's counsel appeared to oppose the sanctions, and submitted a memorandum in opposition (R. 818-1030).[7] By Order dated February 13, 2013, Judge Baxley awarded $17,388.75 to Ballard. (R. 77-89). Appellant moved to alter or

7 In addition, the Supplemental Reply to Anasti's Motion to Quash, dated May 29, 2012 (R. 1030-1054), also addressed the issues raised by Ballard at the hearing.

amend. (R. 1065-1071). Judge Baxley did change the amount awarded to $15,998.75 to reflect a billing error by Ballard, but declined to otherwise alter the Order. (R. 128-133). This appeal followed.

STANDARD OF REVIEW

When reviewing judge's order of sanctions, the appellate court takes its own view of the facts. Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260–61, 578 S.E.2d 11, 14 (2003). "[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." Id. at 261, 578 S.E.2d at 14. An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions. Id.

ARGUMENT

I. The lower court erred in finding that Appellant's service of discovery violated the order of disqualification in the Thompson case because that order was the subject of a motion to alter or amend and thus not yet final.

Judge Baxley's order states that Appellant "violated previous Court orders that disqualified him as counsel in the [Thompson] case..." (R. 79). The Order disqualifying Appellant in the Thompson case was filed April 19, 2011 and received by Appellant on April 21, 2103. Appellant then filed a motion to alter or amend, under Rule 59(e), SCRCP on May 2, 2011. The filing of that motion divested the order of its finality and enforceability. *See,* Southeastern Housing Found. v. Smith, 380 S.C. 621, 640, 670 S.E.2d 680, 690 (Ct. App. 2008) (indicating that a Rule 59(e) motion removes the finality of the challenged judgment); Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct.App.1999)(court's denial of the first motion for reconsideration restored the finality of the summary judgment motion); 12 James W. Moore et al., *Moore's Federal*

Practice ¶ 59.37 and 59.36 (3d ed. 1999) (When a court alters a judgment, the party aggrieved by the alteration may ask for correction. If the trial court denies such a motion, the finality of the judgment is restored and the appeal time begins to run from the date the order is entered.)

The subpoena on Ballard (under the Thompson caption) was served on July 30, 2011.[8] The Circuit Court did not rule on the Motion to Alter or Amend the disqualification order until August 15, 2011, after the discovery had been sent. Because the disqualification order had been divested of enforceability as a matter of law once the Motion to Alter or Amend was filed, Appellant was not in violation of any court order when he served the subpoena on Ballard.

II. The lower court erred in finding that the discovery sought by Appellant was frivolous where the Court of Appeals had already considered the same allegations and rejected them.

Our case law is very clear that an unappealed ruling, "right or wrong, is the law of the case...." Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). This applies even in cases on appeal: "...the disposition of a case in the Court of Appeals when certiorari is not applied for nor granted becomes the law of the case." Barth v. Barth, 293 S.C. 305, 308, 360 S.E.2d 309, 310 (1987).

In 2011, the Anasti case was pending before this Court. After the Court dismissed the appeals, Truslow filed a motion for sanctions against Appellant (R. 368-421). This court denied the Motion on May 20, 2011. Truslow did not seek reconsideration of

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8 Appellant served discovery on Truslow and subpoenas on Truslow's witnesses in the Anasti case on March 8, 2012 in response to Truslow's assertion of damages in the amount of $500,000. Since Appellant was never disqualified in the Anasti case, he cannot have been in violation of any court order in serving such discovery.

that order, nor did he pursue the matter in a further appeal. Thus, any of the conduct on which Truslow based his motion on in this Court has been rejected and cannot form the basis for sanctions in this case.

The matter was remitted to the Circuit Court on October 7, 2011. On November 21, 2011, Truslow filed a new motion in Circuit Court that was entitled "Amended Motion for Rule 11, SCRCP." Truslow stated that the original sanctions motion was filed on November 7, 2007, but had not been heard due to the appeal. (R. 441). However, Truslow failed to inform the Circuit Court that this Court had considered a Motion for Sanctions and denied it. This Amended Motion asserted that the damages and sanctions were now expected to exceed $500,000. The Amended Motion also cited, as grounds for the sanctions, the fact that the appeals had been determined adversely to Appellant's client, but again, failed to mention that he moved for sanctions with regard to the appellate matter, but this Court had denied that motion. As noted, under the law of the case doctrine, any of the alleged sanctionable conduct on which Truslow's motion in this Court was based (and denied), cannot form the basis for the Amended Motion in the Circuit Court.

Moreover, the Amended Motion did not include any support for this claim of damages/sanctions in the amount of $500,000.[9] In a footnote, the Amended Motion purported to "supplement the prior motion so as to make clear that the sanctions are not sought against Defendant Lee...." but only against Appellant. The prior motion filed in 2007, to which this Footnote refers, did not specify the amount of sanctions sought.[10] Thus,

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9 Thus, it is unclear as to whether Truslow was trying to include the $183,000 he sought in this Court that had already been rejected.

10 Furthermore, while Truslow styled his motion as an "amended" motion, it is, in actuality, as completely separate motion than the original sanctions motions filed in 2007, as Judge Baxley recognized: "Prior to Megna's first appeal, Truslow filed a Rule 11

Appellant was entitled to contest the damages/sanctions sought, especially in light of the fact that the Court of Appeals had already denied Truslow's Motion requesting an assessment of $183,000, yet upon remand, Truslow sought more than double that amount.

III. The lower court erred in allowing Truslow to proceed on a motion for sanctions filed more than ten days after remittitur of the Anasti case.

After remittitur, a circuit court reacquires jurisdiction "to enforce the judgment and take any action consistent with the appellate court's ruling." Bunkum v. Manor Properties, 321 S.C. 95, 98-99, 467 S.E.2d 758, 760 (Ct. App. 1996). See also, Christy v. Christy, 317 S.C. 145, 151, 452 S.E.2d 1, 4 (Ct. App. 1994)("The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court."). Furthermore, all post-judgment motions, including those for sanctions, must be filed within ten days of receipt of notice of the entry of an order. Rule 59, SCRCP; Pitman v. Republic Leasing Co., Inc., 351 S.C. 429, 432-33, 570 S.E.2d 187, 189-90 (Ct. App. 2002) (holding that a motion for sanction must be made within ten days under Rule 59); Cox v. Fleetwood Homes of Ga., Inc., 334 S.C. 55, 58, 512 S.E.2d 498, 500 (1999) (trial judge loses jurisdiction after the time for post-trial motions has elapsed).

In the Anasti case, the dismissal of Gina Lee's appeals and the remittitur to the Circuit Court constitutes a final judgment. *See*, Bunkum and Christy, *supra.* Here, the remittitur was issued on October 7, 2011, but Truslow's motion was not filed until November 21, 2011 – much more than ten days after the remittitur. As it was untimely, the lower court no longer had jurisdiction to consider the matter. Pitman, *supra.* Since the motion itself was improper, Appellant's conduct in responding to the motion should not

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sanctions motion against Lee and Megna. **That motion has not been heard and is not addressed by this Order**...." (R. 90-119) (emphasis added).

constitute sanctionable conduct. Thus, the order granting the motion was an abuse of discretion and must be vacated.

IV. The lower court erred in finding Appellant's discovery efforts as improper because discovery was necessary to contest the sanctions and there was no order limiting discovery.

As a matter of due process, Appellant must be afforded an adequate opportunity to contest the sanctions. *See, e.g.*, In re Kunstler, 914 F.2d 505, 522 (4th Cir. 1990)("We find that appellants were not given an adequate opportunity to respond to the type and amount of sanction imposed, ***particularly in light of the large monetary sanction.***") (emphasis added).

Here, the Amended Motion, filed November 21, 2011, for sanctions sought more than $500,000 in damages and sanctions from Appellant. This amount was over twice as much as Truslow sought in the Court of Appeals (and which was denied). There was no affidavit or other attachment indicating how this enormous sum was reached. The only method by which Appellant could contest the sanctions and the large monetary amount was through discovery to determine the how the amount was calculated.

At the status conference on January 18, 2012, before the Honorable James R. Barber, Truslow provided a preliminary witness list for his motion that included Desa Ballard, Tom Earle, Curtis Dowling, Rene Josey, Celeste Jones, and Steve Licata. In addition, by letter dated January 9, 2102, Truslow listed as: Desa Ballard, Rene Josey, Celeste Jones and Bobby Stepp. (R. 241-260). Appellant was entitled to depose those witnesses in order to adequately contest the sanctions. While the lower court did limit the number of witnesses Truslow could call,[11] it put no restrictions on discovery. Furthermore,

11 The lower court, through Judge Baxley, ultimately ordered that no witness testimony would be permitted and only allowed affidavits of Truslow and Ballard.

there is no rule or case law that prohibits the use of discovery in sanctions proceeding. Thus, Appellant was not in violation of any case law, rule or court order in serving the discovery requests. Appellant was merely taking the necessary action to contest the sanctions, which was reasonable ***"particularly in light of the large monetary sanction."*** Kunstler, *supra.*12 The lower court's finding that the discovery was improper is not supported by the facts and/or is an error of law requiring reversal by this Court.

V. The lower court erred in awarding sanctions because South Carolina law provides that an attorney proceeding pro se is not entitled to attorney's fees and that attorney's fees cannot be awarded if not actually incurred.

South Carolina case law has repeatedly held, in a variety of situations, that an attorney acting pro se cannot be awarded attorney's fees. *See, e.g.,* Kay v. Ehrler, 499 U.S. 432, 111 S. Ct. 1435, 113 L. Ed. 2d 486 (1991)(Pro se lawyer/litigant is not entitled to fees under Civil Rights Attorney's Fees Awards Act); Hopkins v. Hopkins, 343 S.C. 301, 306, 540 S.E.2d 454, 457 (2000)(Court found that a *pro se* litigant, whether an attorney or layperson, does not become "liable for or subject to fees charged by an attorney"); First Union Nat. Bank of S. Carolina v. Soden, 333 S.C. 554, 571, 511 S.E.2d 372, 381 (Ct. App. 1998) (court would not allow pro se litigant to recover attorney fees for work of lawyer/husband). Furthermore, one main purpose of sanctions is to compensate the offended party for the losses or expenses incurred and must be related to those expenses. *See,* Floyd v. Floyd, 365 S.C. 56, 80, 615 S.E.2d 465, 478 (Ct. App. 2005)(civil sanctions

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12 The lower court also claims that in the Anasti matter, Appellant's client Gina Lee was not aware of the actions Appellant was taking. However, this finding is not supported by the facts, as Appellant's memorandum to Ms. Lee indicates that she was informed of the sanctions motion and that it was against Appellant only. Thus, there was no need for her to authorize discovery. Furthermore, Ms. Lee authorized all appeals and bankruptcy actions taken on her behalf, and recently achieved a successful result in her bankruptcy case.

are for the purpose of coercing compliance or compensating the complainant for losses); Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997) (sanction should be aimed at the specific misconduct of the party sanctioned).

Here, Ballard appeared pro se, and did not incur fees or costs. Thus, she no suffered no losses and should not be awarded attorney's fees. The lower court's order attempts to avoid this well-established law by claiming that Ballard was awarded sanctions not attorney's fees. (R. 128-133). However, the amount awarded by the lower court was exactly the amount Ballard asserts she was due for the time involved in responding to discovery and in drafting the sanctions motion.[13] The Order itself notes that Ballard[14] submitted an "affidavit of attorney fees" (R.85) for her time and costs. Finally, the lower court concludes that the amount awarded:

> constitutes reimbursement for time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory....

(R.86). The plain language of the order makes it apparent that Ballard is being awarded attorney's fees and costs for representing herself, which cannot be paid to a pro se attorney under South Carolina case law. Thus, the Order of sanctions as to Ballard was an error of law and must be reversed.

Similarly, Truslow is not entitled to attorney's fees. The record contains no evidence that Truslow's client ever "incurred" any attorney's fees or paid Truslow any

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13 A review of the Amended and Supplemental Affidavit of Ballard, dated August 12, 2012, indicates that only a small amount of time was spent in objecting to the subpoena, and the majority of the time was spend on trying to get a date for sanctions hearing and preparing and/or reviewing affidavits of Truslow.

14 Ballard herself acknowledges that she was appearing pro se: "Your Honor, I am Desa Ballard, and I am here pro se." (R. 264).

fees. Where there is no evidence that attorneys' fees and costs were actually incurred by a party, there cannot be an award for fees and costs assessed against another party. *See* Williamson v. Middleton, 383 S.C. 490, 681 S.E.2d 867 (2009) (holding that where there is no competent evidence that attorneys' fees and costs were actually incurred, they cannot be awarded).

It is undisputed that Ballard did not retain counsel and thus did not "actually incur" attorney's fees. Similarly, the record does not show that Truslow's client actually paid (and thus "incurred") any fees. Thus, the lower court erred in awarding such fees to Truslow and Ballard.

VI. The lower court erred in finding that Appellant misused the discovery process in Thompson to pursue discovery in Anasti.

The lower court held that the subpoenaed issued to Ballard under the Thompson caption sought "nothing relevant" to that case and was an impermissible attempt by Appellant to engage in discovery regarding the sanctions motion in Anasti. The court wrongly concluded that "there was no other purpose for the discovery sought" other than to use as a defense to Truslow's sanctions motion. However, at the time that Appellant issued the subpoena, he had a pending motion in Thompson to disqualify Rene Josey as counsel to the defendant, based upon the fact that Josey's partner was concurrently representing Pee Dee in a workers compensation case. After learning that Josey may have been in conferences with Ballard, who had also agreed to represent Pee Dee and who had been provided confidential information, Appellant had valid concerns regarding Josey's conflict of interest and Ballard's knowledge of those conflicts. Those concerns extended to her communications to other attorneys regarding Pee Dee. The subpoena sought written communications with the various attorneys involved in Pee Dee litigation. (R. 424-433).

It is important to note that the documents sought under the subpoena to Ballard were limited Pee Dee, its lawyers or employees. Id. (R. 424-433). These written communications were necessary to determine the conflict of interest of Josey and his law firm. In addition, the communications sought were needed to determine if any confidential information regarding Pee Dee had been disclosed to the attorneys in the Thompson case or other litigation involving Pee Dee.

VII. The lower court erred in finding Appellant had no good-faith basis to subpoena Ballard, who agreed to represent Appellant and Pee Dee, while at the same time consulting with attorneys who were directly adverse to Appellant and Pee Dee.

As noted in the Comment to Rule 1.7 (Conflict of Interest) in the Rules of Professional Conduct: "Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts can arise from a lawyer's responsibilities to another client, a former client or third person or from the lawyer's own interests." Furthermore, a conflict "may exist before representation is undertaken, in which representation must be declined...." Id.

Here, Ballard agreed to represent Appellant and Pee Dee, even though she already had involvement in and loyalties to other parties (James Anasti and Mr. Truslow) that were directly adverse to Megna. On October 12, 2010, Appellant contacted Ballard to represent him and Pee Dee[15] in litigation that arose in Lake City, South Carolina. (R. 1165-1167). He provided very confidential documentation to Ballard's office. Id. In an email dated October 15, 2010, Ballard's partner indicated that they would be "happy to participate" on behalf of Appellant/Pee Dee for an hourly fee.[16] Id.

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15 As noted previously, Appellant is CEO of Pee Dee.

16 At the hearing on May 15, 2012, Ballard stated that she told her partner or staff that

Neither Ballard nor her partner revealed that: 1) Ballard was involved in the Anasti litigation, including advising Truslow on sanctions against Appellant; or 2) Ballard and Truslow had consulted with attorneys in the Thompson case and in the Lake City litigation. When Truslow filed a Motion for Sanctions in the Anasti appeal on May 9, 2011, the filing was accompanied by both his affidavit and an affidavit by Ballard. (R. 398). The affidavits revealed the repeated conferences between Ballard and Truslow and conferences with the attorneys in other litigation that was directly adverse to Appellant and Pee Dee. Id. As Ballard herself has acknowledged, she is not representing any party in the Thompson case. (R. 421-440). Thus, because Ballard had received and reviewed confidential information about Pee Dee while at the same time she engaged in conversations with attorneys in Thompson and the Lake City litigation, Appellant had a good faith basis to investigate the substance of those conversations.

CONCLUSION

As set forth herein, the lower court's order was not supported by the facts and was based on errors of law. Thus, it is respectfully submitted that the lower court abused its discretion in awarding sanctions and the orders must be reversed.

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she did not want anything to do with a case involving Appellant and that her partner "did what we often is, we quote a fee, which will cause people to be less than interested in retaining our services." (R. 290). However, the emails show that no fee was actually quoted and that Ballard's firm indicated they would accept representation for an hourly fee.

James M. Griffin
Ariail E. King
Lewis, Babcock & Griffin, L.L.P.
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

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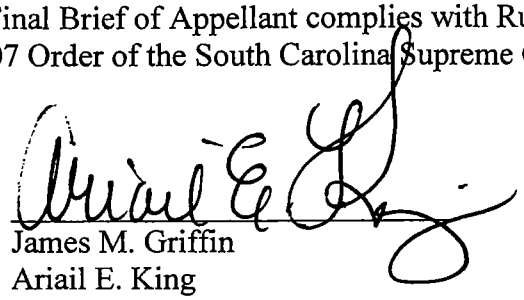
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Appellant complies with Rule 211(b) SCACR and with the August 13, 2007 Order of the South Carolina Supreme Court.



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

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And

Ex Parte: Desa Ballard, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

PROOF OR SERVICE

I, Jaime Harmon, the undersigned employee of Lewis Babcock & Griffin L.L.P, attorney for Tony Megna, do hereby certify that I have served a copy of Appellant's Final Brief on March

25, 2014, by causing a copy of same to be deposited in the U.S. Mail, proper postage prepaid addressed as follows:

Douglas Truslow
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202

Desa Ballard
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, SC 29171

Jaime Harmon

Columbia, South Carolina
March 25, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE
TRIAL COURT CASE NO. 2010-CP-16-0332
APPELLATE CASE NO. 2013-001461

Ex Parte:	Douglas N. Truslow,	Respondent,
Ex Parte:	Tony R. Megna,	Appellant
In re:		
James Anasti,		Plaintiff
Vs.		
Lance Goodwin, Willis Goodwin, Gina L. Anasti Lee, And Richland County of Clerk of Court		Defendants
And		
Ex Parte:	Desa Ballard	Respondent,
Ex Parte:	Tony R. Megna,	Appellant
In re:		
Pee Dee Health Care P.A.,		Plaintiff.
Vs.		
Estate of Hugh S. Thompson,		Defendant.

FINAL BRIEF OF RESPONDENT DESA BALLARD

Desa Ballard, *Pro Se*
Post Office Box 6338
West Columbia, SC 29171
Bar No. 000498

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Statement of the Case

Appellant Tony R. Megna ("Megna") served a subpoena on Respondent Desa Ballard ("Ballard") which was received by her via certified mail on or about July 30, 2011. The subpoena was captioned in a case pending in Darlington called *Pee Dee Health Care v. Estate of Hugh S. Thompson,* Case No.2010-CP-16-0332 (hereafter the *Pee Dee Healthcare* case)[1].

Ballard filed and served an objection to the subpoena and a motion for sanctions on or about August 5, 2011. On May 15, 2012, a hearing was held on the motion, as well as motions made by attorney Douglas N. Truslow in Richland County case, *Anasti v. Wilson*, Case No. 2007-CP-40-0576 (hereafter the *Anasti* case). Following the hearing, Megna's counsel submitted an unsolicited memorandum to Judge Baxley. It is believed that this memorandum did not become part of the trial court record, and should not be included in the record on appeal in this matter. (Motion to Strike, 9-16-2013)[2]

The trial judge issued separate orders in each matter on February 11, 2012. (R. pp. 77-102). The order in *Anasti* did not involve Ballard. In the *Pee Dee Health Care* case, the trial judge awarded sanctions to Ballard against Megna in the amount of $17,388.75.

Megna, through counsel, filed motions for reconsideration in both cases. The trial judge held a telephone hearing, with arguments limited to the amount of sanctions

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[1] The Court has dealt with this case before, although not involving Ballard or Truslow. *See Pee Dee Health Care P.A. v. Estate of Thompson*, Unpublished Opinion No. 2013-UP-311, Appellate Tracking No. 2011-185767 On information and belief, Pee Dee Health Care is seeking a writ of certiorari from the Supreme Court to review this Court's decision.

[2] Ballard's motion was denied by the Court by order dated November 15 2013.

awarded. (R. p 121, footnote 1). Duplicate original orders with combined captions (for both the *Anasti* case and the *Pee Dee Health Care* case) were issued on June 12, 2013 addressing the motions for reconsideration. In the order, the trial judge granted Ballard's request to reduce the sanctions awarded her to $15,998.75.

Megna, through counsel, appealed, and the Court of Appeals consolidated the two appeals.

Megna has made several inaccurate statements in his Statement of the Case, and those are corrected here.

Item 1: On page 5 of Megna's initial brief, he states that "Ballard's partner sent Appellant an email, indicating that the packet of information he sent was under review by Ballard and indicated their offer to represent Appellant or others for an hourly fee." The actual text of the emails reflects: (R. p. 1193):

- "I passed the packet on to Desa for her review." There is no evidence that Ballard actually reviewed the packet of material. The record does not reflect that anyone in her office reviewed the materials from Megna[3].
- "The expense (we would charge hourly) would probably be more than your client [who was not identified] could handle. If you would like us to send a fee agreement, we will be happy to participate in the case." There was no discussion of who Ballard's firm would represent, if anyone.

Id.

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[3] The materials were later reviewed, after Mark Matthews filed his first grievance against Ballard, so Ballard could understand what Mark Matthews was talking about. After doing so, Ballard advised Judge Baxley there was nothing in the materials submitted that relates to the *Anasti* case, about which Ballard was consulting with Mr. Truslow, or any other fact which would implicate Rule 1.7, 1.8 or 1.9 of the Rules of Professional Conduct.. (R. p. 291, lines 3-8). There is no evidence to the contrary.

Item 2: On page 6 of Megna's initial brief, he states that "On August 12, 2011,.. Judge Baxley also considered Ballard's motion to quash and granted it, but did not address sanctions." This is inaccurate. There was only one motion hearing on Ballard's motion, and it occurred on May 15, 2012[4]. There is only one order ruling upon Ballard's motion for sanctions, and it was issued on February 11, 2013.

[4] There is an order from Judge Baxley in the *Pee Dee Health Care* case dated August 12, 2011, but Ballard's motion is not mentioned in that order. The order directs counsel for Pee Dee Health Care to "personally serve a copy of this Order on all parties affected by the Court's decision herein. . ." Ballard was not involved in the proceedings which led to that order. There is no evidence that Ballard was served with this order, presumably because she was not a "part[y] affected by the Court's decision. . . " Megna's designations do not include this order.

Statement of Facts

Ballard is not a party to either of these actions, nor does she represent any of the parties to these actions. In 2007, attorney Douglas Truslow began consulting with her for advice concerning his responsibilities regarding unprofessional behavior exhibited by Tony Megna (hereafter "Megna"), who was opposing counsel to Mr. Truslow in a Richland County case. *Anasti v. Wilson et al.*, Case No. 2007-CP-40-00576. (R. p. 283, line 23 – p. 284, line 14).

In October, 2010, Megna telephoned Ballard's partner Stephanie Weissenstein and told her he wanted to consult the firm on a case involving "people who are rather connected." (R. p. 1193). When Ballard was advised of the inquiry, she advised Ms. Weissenstein that the firm wanted nothing to do with Megna or any case in which he was involved. (R p. 290, lines 17- p. 291, line 10). Ms. Weissenstein[5] advised Megna the firm would look at his matter at our regular hourly rate, which usually discourages casual inquiries. (*Id.*) Ballard's firm did not review the materials from Megna. (R. p. 290, line 21 – p. 291, line 10). The materials sent by Megna to Ms. Weissenstein were not introduced into evidence before Judge Baxley, so the only evidence of record regarding the content of these materials is Ballard's statement that their content did not relate to the

[5] The transcript of the May 16, 2012 hearing erroneously states that Ballard's partner is "Ms. Rogers." (R. p. 290, line 24).

matter she was handling for Truslow and did not create a conflict of interest. (R. p. 31, lines 3-8)[6].

On July 30, 2011, Ballard received a subpoena from Megna in a case captioned in Darlington County involving Pee Dee Health Care. (R. pp. 424 - 433). She inquired into the matter and learned that Megna had earlier been disqualified as counsel in the Pee Dee Health Care case. (R. p. 285, lines 2-5). Ballard filed and served an objection to the subpoena and a motion for sanctions. (R. pp. 436 - 439; pp. 1091-1093).

Shortly thereafter, an individual named Mark Matthews filed a grievance against Ballard and others with the Office of Disciplinary Counsel. (R. pp. 1184 - 1197). Ballard researched the identity of Mark Matthews and determined he was somehow related to Pee Dee Health Care, which was the party on whose behalf Megna had attempted to subpoena her. *Id.* After Judge Baxley scheduled a hearing on her motion for sanctions, Ballard filed a redacted[7] copy of the complaint from Mark Matthews as an exhibit to her motion for sanctions. *Id.* Mr. Matthews filed a second complaint against her, which she also filed with the Darlington clerk as an exhibit to the motion for sanctions. (R. pp. 1272 - 1292).

As the hearing approached, Megna sent voluminous documents which required review. (R. pp. 1217-1271). As required by the notice from Judge Baxley (R. pp. 1198-1199), Ballard submitted an affidavit outlining the time spent in filing the motions and

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[6] Judge Baxley also concluded that the argument about Megna's attempt to communicate with Ballard did not constitute a conflict of interest preventing her from continuing to assist Truslow. (R. p. 82, footnote 2).

[7] The original complaint sent to Office of Disciplinary Counsel by Mark Matthews complained about many lawyers. Before filing the complaint with the circuit court as an exhibit, Ballard redacted all information from the document except that portion which related to her. (R. pp. 1184 - 1192).

preparing for the hearing, including anticipated travel time for the hearing. (R. pp. 1133-1144). Following the hearing and Judge Baxley's letter dated July 26, 2012, she submitted an amended affidavit which deleted the accounting of the time she spent in responding to the grievances filed against her by Mr. Matthews and included additional time incurred in the matter since the hearing.. (R. pp. 1145-1155).

Judge Baxley granted Ballard's motion for sanctions by order dated February 11, 2012. (R. p. 77). Megna sought reconsideration, which was denied (with the exception of a request by Ballard to reduce the sanctions awarded to her). (R. pp. 128-133). This appeal followed.

Issue One

The lower court erred in finding that Appellant's service of discovery violated the order of disqualification in the Thompson case because that order was the subject of a motion to alter or amend and thus not yet final.

This issue was not raised in any of the pre-hearing filings or at the hearing before Judge Baxley and is therefore not preserved for appeal before this Court. *Bean v. SC Central Railroad Co. Inc.*, 392 S.C.532 709 S.E.2d 99 (Ct.App. 2011)[8]. This issue was raised for the first time in Megna's motion for reconsideration. (R. p. 1065, paragraph (a)). Judge Baxley declined to hear argument on this issue, and "no objection was made to the notice or limitation." (R. p. 129, footnote 1). The issue was not argued in the reconsideration hearing, even though Judge Baxley gave everyone an opportunity to "place a comment on the record about the issues, the reduction of issues, or the matters that are before us today." (Supp. R. p 30, lines 11-14).

Before allowing argument, Judge Baxley offered a second time for Megna's counsel to address any issues other than the amount of the sanctions. (Supp. R. p 31, lines 16-19). Megna's counsel made no objections to Judge Baxley's decision that argument was limited to the amount of sanctions which had been awarded against Megna.

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[8] Megna did argue in his Memorandum that Ballard's hearing could not proceed because the order of disqualification was on appeal. (R.p. 818). His memorandum stated "[t]he Court of Appeals has held all other matters in abeyance until the disqualification matter is determined." The reference is to Exhibit N. Exhibit N begins on unnumbered Page 192 of Megna's Memorandum (R.p. 1009), and contains: (1) a letter from J. Rene Josey dated 4-19-2011 serving Judge Baxley's order dated 4-15-2011; (2) Letter from Judge Baxley to J. Rene Josey dated April 15, 2011 enclosing the original order with a request for Mr. Josey to arrange for filing and service; (3) Mr. Josey's certificate of service as to the order; and (4) Order of Judge Baxley dated 4-15-2011, filed 4-18-2011disqualifying Mr. Megna from serving as counsel in the *Pee Dee Health Care* Case. The next page is the Cover Sheet for Exhibit O. (R.p. 1022).There is no order from the Court of Appeals contained in Exhibit N.

(Supp. R. p. 31 line 20 – p. 32, line 3). Mr. Truslow raised several procedural issues "that may have barred the Court's consideration of the Motions for reconsideration, and those objections were noted but not necessary to be ruled upon." (R. pp. 129-130).

Even though Judge Baxley limited the argument and did not expressly address Mr. Truslow's procedural arguments, he "considered all issues raised by the motions for reconsideration and concluded all to be without merit." (R. p. 130). Nonetheless, since this issue was not raised until the motion for reconsideration, it is not preserved for review. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct.App. 1990).

Judge Baxley's ruling on the merits of this issue on reconsideration did not preserve it for appeal. "A party cannot use Rule 59 (e), SCRCP, to present to the trial court an issue the party could have raised prior to judgment but did not." *Crary v. Djebelli*, 321 S.C. 38, 43, 467 S.E.2d 1128, 131-32 (Ct.App. 1995) *reversed on other grounds* 329 S.C. 385, 496 S.E.2d 21 (1998). *See also Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000).

Megna's argument that the pendency of a motion pursuant to Rule 59 (e) somehow suspends the validity of a judgment is not supported by any law. The cases cited by him do <u>not</u> so hold. Megna argues that filing of the motion "divested the order of its finality and enforceability," citing *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680 (Ct.App. 2008) and *Coward Hund Construction Co. Inc. v. Ball Corp.*, .336 S.C. 1, 518 S.E.2d 56 (Ct.App. 1999).

The first case, *Southeastern*, discussed whether the filing of a motion for relief under Rule 59, SCRCP suspends the one-year deadline set forth in Rule 60, SCRCP, for

seeking relief from a judgment. In concluding that the Rule 59, SCRCP motion stayed the one-year period for seeking relief under Rule 60, SCRCP, the Supreme Court did stated that "while a 59(e) motion is pending . . . the finality of the challenged judgment has been removed. . ." it did so only in the context of deciding when the time begins to run for the filing of a Rule 60, SCRCP motion. *Southeastern Housing Foundation, supra.*, 380 S.C. @ 640. The decision in *Coward* addressed only whether a second motion for reconsideration stayed the time for appeal. *Coward Hund Construction Co., supra*, 336 S.C. @ 2.

A "judgment" is "effective" when "entered." Rule 58(a)(2), SCRCP. A judgment is effective "the moment. . . [the order] is filed by the clerk of court, it becomes the judgment of the court, and fixes the right of the parties." *Upchurch v. Upchurch*, 367 S.C. 16, 22-23, 624 S.E.2d 643 (2006). *See also Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct.App. 1996). "The final written order contains the binding instructions which are to be followed by the parties." *Corbin v. Kohler Co.*, 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct.App. 2002).

Under Megna's theory, the order disqualifying him was, in fact, final when it was entered on April 19, 2011, but became "unfinal" when he filed motions for reconsideration under Rule 59 (e), SCRCP. According to Megna's initial brief, he filed a Rule 59(e), SCRCP motion on May 2, 2011, and the motion was denied on August 15, 2011. (Appellant's Initial Brief p. 8). Under this theory, the order of disqualification of Megna was effective on and off, at his whim and within his sole control, as follows:

- From the date of issue (R.pp. 55-63), for twelve (12) days (until the Rule 59, SCRCP motion was filed) the order was final;

- Then the order became "unfinal" for a period of more than three months, until the judge issued his order denying reconsideration on August 15, 2011;

- The order became final again on August 15, 2011 when reconsideration was denied. (R.pp. 67-68)

- Megna's appeal was filed on February 16, 2011, so the order was "unfinal" again for more than two (2) years, until this Court affirmed the disqualification by its decision issued July 3, 2013. *Pee Dee Health Care P.A. v. Hugh S. Thompson III et al.*, Unpublished Case No. 2013-UP-0311[9]. *See* Appellate Tracking No. 2011-1976711 and 2011-203391.

- The order became final on July 3, 2013 and remained final until July 18, 2013, when Megna made his next filing. *Id.*

- Megna caused the order to be "unfinal" again when he filed a Motion to Reconsider the July 3, 2013 decision of this Court[10]. *Id.*

- The disqualification became final again when this Court denied Megna's Motion for Reconsideration on August 21, 2013. *Id.*

- Megna filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on September 9, 2013 challenging this Court's decision in 2013-UP-0311. So, according to him, the disqualification became "unfinal" on that date and is not currently in effect. As of the date of this initial brief, that petition remains pending [petition denied 12-19-2013].

Megna argues that his motion for reconsideration "divested" the order of its "enforceability as a matter of law." Stated differently, Megna is arguing that he had no obligation to comply with the order of disqualification on those days when he had filed

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[9] It is respondent's position that the order constitutes "an order granting an injunction or temporary restraining order" such that there was no automatic stay during the earlier appeal (decided by this Court in 2013-UP-0311). Rule 241(b)(8), SCRCP. There is no provision of law which stays the effectiveness of the order during a Motion for Reconsideration. A judgment is a judgment.

[10] In that motion for reconsideration, Megna argued before this Court the same issue he argues here: He can make the order "final" or "unfinal" based on when he files something challenging the ruling of disqualification. (Of Record, Appellate tracking No. 2011-197711 and 2011-203391)

something, anything at all, challenging the ruling, including today (since the Petition for Writ of Certiorari is currently pending). Megna's position is the disqualification is final only when he allows it to be.

Respondent Ballard respectfully disagrees.

> The disobedience of any order, judgment or decree of a court having jurisdiction to issue it is a contempt of that court, however erroneous or improvident the issuing of it may have been. Such order is obligatory until reversed by an appellate court, or until corrected or discharged by the court which made it. But if, in making such order, the court was without jurisdiction, disobedience of is not a contempt."

(emphasis added). *State v. Nathans*, 49 S.C. 199, 27 S.E. 52 (1897). *See also Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792 (Ct.A[p. 2009)(discussing the distinction between a "void" judgment and one that is merely "voidable."); *Fryer v. South Carolina Law Enforcement Division*, 369 S.C. 395, 631 S.E.2d 918 (Ct.App. 2006)(discussing the obligation to obey a court order that is voidable until it is actually voided).

The only relief which Megna could obtain is to argue that the disqualification order was "void" at the time it was issued. *See Long v. McMillan*, 226 S.C. 598, 86 S.E.2d 477 (1955). Otherwise, he had to obey the order until it was reversed or until he obtained an order from a court with jurisdiction lifting the effect of the order. He did not do so.

Issue Two

The lower court erred in finding that the discovery sought by Appellant was frivolous where the Court of Appeals had already considered the same allegations and rejected them.

The Court of Appeals never reached any decision on the merits in the *Anasti* case. On the contrary, most of the *Anasti* appeal was devoted to determining whether Megna had been truthful with the various courts in which he made representations as to when or whether he received copies of orders or other documents. (R. p. 14; Supp. R. p. 1; Supp. R. p. 7;).

Since this Court dismissed the *Anasti* appeals on the basis that Megna had never timely filed the Notices or other documents, this court never obtained jurisdiction to decide any substantive issues. *Hill v. South Carolina Department of Health and Environmental Control*, 389 S.C. 1, 698 S.E.2d 612 (2010); *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct.App. 2004). Indeed, this Court expressly *advised the parties to the Anasti appeal that* "this Court will only consider [Megna's] appeal from Judge Manning's orders filed April 3, 2008 and April 1, 2009, at this time. Final briefs, therefore, shall include only those issues relating to the timeliness of [Megna]'s appeal" (Supp. R. pp. 7-8).

The only issues which are precluded by the prior appeal in *Anasti* is that Megna never timely filed his motions for reconsideration or his appeal in the prior appeal.

Moreover, according to Truslow's Motion for Sanctions filed with this Court during the Anasti appeal, he sought "sanctions, damages, legal fees and costs caused by . . . Megna's misconduct *in this frivolous appeal.*" (emphasis added.) Even if this Court

had decided Truslow's motion *on the merits*, the merits were limited to the conduct by Megna in the appeal before this Court. Judge Baxley's order sanctioned Megna for entirely different conduct. (R. p. 90).

The circuit court can consider attorney misconduct which during an appeal when assessing sanctions. Even if the Court of Appeals had addressed the merits of Megna's conduct during the trial court proceedings, sanctions by the circuit court for Megna's appellate misconduct may also be warranted. *Austin v. Stokes-Craven Holding Corp.*, Opinion 27324 (Supreme Court October 23, 2013), 2013 WL 5737705.

Issue Three

The lower court erred in allowing Truslow to proceed on a motion for sanctions filed more than ten days after remittitur of the *Anasti* case.

Respondent Ballard is not affected by this issue and does not address it on the merits here. However, she notes that it does not appear that this issue was raised by Megna to Judge Baxley in any of the pre-hearing filings (prior to the May 16, 2012 hearing) or at the hearing itself. The first mention of this issue of which Ballard is aware appears in Megna's Motion for Reconsideration dated 2-25-2013 (R. p. 1065).

For the reasons set forth in Issue One, *supra.*, this issue is not preserved.

Issue Four

The lower court erred in finding Appellant's discovery efforts as improper because discovery was necessary to contest the sanction and there was no order limiting discovery.

It does not appear that this issue was raised by Megna to Judge Baxley in any of the pre-hearing filings (prior to the May 16, 2012 hearing) or at the hearing itself. [note: later located on R.p. 821]. The first mention of this issue of which Ballard is aware appears in Megna's Motion for Reconsideration dated February 26, 2013 (R. p. 1065) Respondent Ballard incorporates her argument set forth in Issue One, *supra.*

Megna argues he needed to engage in discovery to in the *Anasti* case because Mr. Truslow's motion sought such a large amount of damages and sanctions, yet it offered no explanation for the source of the sum sought. (Appellant's Initial Brief p. 11). In his brief, Megna refers to Mr. Truslow's "Amended Motion, filed November 21, 2011 (R. p. 441), for sanctions", presumably in the *Anasti* case. (Appellant's Initial Brief page 11). That motion has not been heard. Judge Baxley's order in this case addressed only Mr. Truslow's motion dated March 9, 2012. (R. p. 90, footnote 1)[11].

Mr. Truslow's motion which led to the order on appeal does not request any specific amount of sanctions; moreover, it explains in detail the basis for the relief he

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[11] Megna is confused. He states in Footnote 11 of his initial brief that "Judge Baxley ultimately ordered that no witness testimony would be permitted and only allowed affidavits of Truslow and Ballard." (Appellant's Initial Brief P. 12). Judge Baxley did not address the motion for sanctions which was the subject of the status conference with Judge Barber. Indeed, the motion which was heard by Judge Baxley (and is the subject of this appeal) had not even been filed when the status conference was held with Judge Barber in January, 2012.

sought, including exhibits which outlined the nature of the misconduct which Mr. Truslow offered to support his request. (R. pp. 444-449). Megna's argument apparently is based upon a statement made by Mr. Truslow during a pretrial or status conference before Judge Barber on January 18, 2012 (R. p. 241). That motion has not yet been heard[12]. It does not appear that Megna ever requested discovery on that motion. As more thoroughly explained by Mr. Truslow in his brief on this issue, the *Anasti* case was over, but for a damages hearing against parties which Megna did not represent, and the still-pending Motion for Sanctions. If Mr. Megna wants to engage in discovery for the Motion for Sanctions that is still pending in the *Anasti* case, presumably he may ask a judge in Richland County to allow that.

Regardless of which motion for sanctions is involved, the motions for sanctions were filed in the *Anasti* case. Megna offers no explanation for why he sought discovery from Ballard using the *Pee Dee Healthcare* case in which he was disqualified.

Megna argues there was no order limiting discovery in the Anasti case. (Appellant's Initial Brief p. 12). The undersigned notes that neither Rule 11, SCRCP nor the Friviolous Civil Proceedings Sanctions Act permits discovery. S.C.Code Ann. Section 15-36-10. The focus of this inquiry should be on the stage to which the *Anasti* proceedings had matured when Megna attempted to engage in discovery. As explained by Mr. Truslow in his brief, the *Anasti* case was over, but for pending sanctions motions against Megna and a damages hearing against parties other than Megna or his former client Lee. Depositions and discovery, by definition, occur before a case has been

[12] On information and belief, the motion was scheduled to be heard on Tuesday, December 10, 2013, but was delayed because the parties agreed to submit the issue to the presiding judge on briefs, exhibits and affidavits.

adjudicated. *See Conway v. Charleston Lincoln Mercury Inc.*, 363 S.C. 301, 609 S.E.2d 838 (Ct.App. 2005)(discussing the right to use discovery to prepare for "trial."). *See also, Holly Woods Association of Residence Owners v. Hiller*, 392 S.C. 172, 708 S.E.2d 787 (Ct.App. 2011)(discussing the purpose of discovery is to prevent a trial from becoming a "surprise.").

It is difficult to address this issue further when Megna's brief so clearly misconstrues the proceedings below.

Issue Five

The lower court erred in awarding sanctions because South Carolina law provides that an attorney proceeding *pro se* is not entitled to attorney's fees and that attorney's fees cannot be awarded if not actually incurred.

Megna's own statement of the issue answers this question. Judge Baxley did not award attorney fees. He awarded sanctions, and used as the basis for his sanctions the amount of time the respective attorneys had necessarily devoted to responding to Megna's frivolous discovery pursuit. Judge Baxley could have used another method to calculate the sanctions he awarded against Megna. Here, he chose the simplest and most definitive (and fair) method of calculation: the amount of time the affected attorneys had to spend in dealing with the abusive discovery requests and/or subpoenas from Megna and in seeking sanctions. That method by which the judge determines the amount of sanction is within his sound discretion. *See Ex Parte Bon Secours-St. Francis Xavier Hospital Inc., In re: Wieters*, 393 S.C. 590, 713 S.E.2d 624 (2011).

All of the cases cited by Megna in support of his argument that a *pro se* litigant cannot recover attorney fees are based on fee-shifting statutes which permit one side to recover attorney fees from the other side according to the terms of the specific statute involved. None of the cases relied upon by Megna for his assertion of "well-settled law" have anything to do with an award of sanctions or the method by which an amount of sanctions should be calculated. (Appellant's Initial Brief p. 13). To wit:

- *Kay v. Ehrler*, 499 U.S. 432, 111 S.Ct. 1435, 113 L.Ed2d 486 (2011): construing fee-shifting under 42 U.S.C.A. §1988.

- *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.E.2d 454 (2000): discussing fees awarded in a family court matter under the predecessor fee-shifting statute S.C.Code Ann. §63-3-530(A)(2) (2012).

- *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct.App. 1998):

Megna's citation to *Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d 867 (2009) is especially troublesome Megna and his counsel have already been told that the *Williamson* case involved the specific interpretation of S.C.Code Ann. § 39-65-30, a fee-shifting statute which allowed recovery against the unsuccessful party of attorney fees which had been "actually and necessarily incurred." *Id.* (Supp. R. p. 38, line 25 – p. 39, line 9). The decision itself makes that clear. The *Williamson* case does not establish any general law regarding awards of attorney fees under any fee-shifting statute other than the specific one involved in that case. It has nothing to do with an award of sanctions.

Judge Baxley made clear in both his initial order and in his order denying rehearing that the award made in the case were sanctions. (R. p. 77; R. p. 128). In his initial order, Judge Baxley noted several times the nature of Megna's conduct which justified an award of sanctions:

- "[G]ross civility and professionalism violations." (R. p. 77)
- "Megna made false statements to the circuit court and the appellate court" (R.p.80)
- "Megna provided the Court. . . entitled 'Synopsis'. . . a rambling diatribe of challenges of unethical behavior against Truslow, Ballard, and others." (R. p. 81).

- " . . . [P]art of an improper and impermissible attempt by Megna to engage in discovery for the purposes of defending himself (not his client) against motions for sanctions that were pending against him in the Richland County case." (R. p. 82).
- " . . . The subpoena . . . constituted a fishing expedition into what other discussions she or others may have had with Truslow, all apparently for the purpose of, *inter alia*, seeking to deflect sanctions against himself in the Richland case." (R. p. 83).
- ". . . Megna has shown little regard for the Orders of this Court or for the legal limitations imposed upon him in his representative capacity as counsel for his client." *Id.*
- ". . . he did so, at least in part, as a pretext to harass her and apparently to dissuade her from providing legal advice to Truslow. . . " *Id*
- "Megna has willfully, deliberately and unapologetically attempted to misuse the legal process through . . . this case and he is in willful violation of this Court's orders, specifically including the Order disqualifying him as counsel . . . " *Id.*
- "Megna's conduct is willful, deliberate and unapologetic." (R. p. 84).
- "Perhaps the most egregious part of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless." *Id.*

- "The lack of respect Megna has shown for this Court, the legal process, and the purposes of these legal proceedings is unprecedented for this Court." *Id.*
- ". . . Megna's conduct is ill-conceived, vitriolic, and abusive. . . [and is] alarming and disturbing. He has engaged in a concerted effort to abuse the legal process. . . for his own purposes, abusing this Court and his colleagues in the process." *Id.*

Judge Baxley left little doubt that his award against Megna in favor of Ballard was an award of sanctions. ". . . [S]he should be compensated by way of sanctions against Megna." (R. p. 86, ¶ 34). While he chose to calculate the award of sanctions based on the time spent in responding to the abusive subpoena and these proceedings, it is clear that the award was intended to sanction Megna for his wrongful conduct. It is further clear that the amount awarded was done so pursuant to Rule 11, SCRCP. *Id.* Page 9, ¶35). Ballard's Affidavit for Attorney Fees specifically indicated that her request for an award was based on Rule 11 (and Rule 37), SCRCP. (R. p. 1137, ¶ 17).

Megna's argument that the judge's use of time spent by an attorney in calculating an award of sanctions is "an error of law and must be reversed" is simply incorrect. (Appellant' Initial Brief p. 14). To the contrary, the amount was within the discretion of the trial court and was supported by the evidence. *Ex Parte: Bon Secours, supra.*

Issue Six

The lower court erred in finding that Appellant misused the discovery process in Thompson to pursue discovery in Anasti.

Megna has come up with a new argument to explain why he served a subpoena on Ballard in the *Pee Dee Health Care* case. He argues that he had a motion pending in the Court of Appeals in the *Pee Dee Health Care* case that related to efforts to disqualify attorney Rene Josey[13], and he suspected Ballard may have spoken to Josey. (Appellant's Initial Brief p. 15). This is a "new and improved" argument, raised for the first time by Megna's current counsel in the Motion for Reconsideration. (R. p. 1065 ¶ b – R. p. 1066 ¶ c).

Aside from being the first time this argument has been made (and therefore not preserved, *see* Issue One, *supra.*), the argument is specious. If, in fact, a motion for disqualification in the *Pee Dee Health Care* case was pending the Court of Appeals when Megna served the subpoena with that caption on Ballard, then all trial court proceedings at the trial level were stayed and Megna had no right (setting aside his disqualification) to engage in discovery of any kind. He violated the automatic stay by undertaking discovery while the matter was on appeal. Rule 241 (a), SCACR.

Megna apparently believes the appellate stay applies when he is the subject of action being taken at the trial level during appeal, but not when he is the one taking action.

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[13] Megna has designated a motion filed in the Court of Appeals by Pee Dee Health Care on August 24, 2011. (Appellant's designations dated 8-26-2012, Item 13) [This designation was later withdrawn.] On information and belief, Megna is referring to a totally separate case. *See* foonote 1.

Regardless, taken to its [il]logical extreme, Megna's argument is that he can engage in discovery at the trial court level while the appeal is pending, related to an issue which is before the appellate court. He offers no explanation as to how the information he planned to discover in the trial court *via* the subpoena to Ballard would be presented to the appellate court for consideration in the motion to disqualify Josey. In fact, it could not have been. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

In addition to the current argument not being presented to the trial court, the argument Megna made at the trial court is exactly what Judge Baxley ruled. In his Synopsis, submitted in advance of the hearing before Judge Baxley, Megna stated "The limited discovery requested to date is targeted at understanding [the attorneys (who were subpoenaed by Megna)] individual and collective involvement in the [Anasti] matter and what they intend to testify to in the Richland county case." (R. p. 1224. ¶ E.) Judge Baxley's conclusion that the discovery served on Ballard in the *Pee Dee Healthcare* case was for use in the *Anasti* case is exactly what Megna said it was for.

Additionally, Megna's own lawyer argued before Judge Baxley that Megna engaged in discovery after having received a motion for sanctions in the *Anasti* case and Megna wanted to know if there was a connection between the *Anasti* case and the *Pee Dee Health Care* case. "That is all he wanted to know." (R. p. 300, lines 21-22). "[Ballard's] name appeared as being in a separate case. All [Megna] wanted to know was why." (R. p. 302, lines 14 - 15).

Respondent finds it incredulous that Megna, on appeal, argues against the exact ground he argued for before Judge Baxley. Megna cannot argue a different ground on appeal from the argument he advanced before Judge Baxley. *Simpson v. Simpson*, 404 S.C. 563, 746 S.E.2d 54 (Ct.App. 2013)(judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with the one which he previously argued and upon which he prevailed.)

This issue is without merit.

Issue Seven

The lower court erred in finding Appellant had no good-faith basis to subpoena Ballard, who agreed to represent Appellant and Pee Dee, while at the same time consulting with attorneys who were directly adverse to Appellant and Pee Dee.

Megna's contact to Ballard's office in October, 2012 did not create an attorney-client relationship between Ballard and Megna, nor between Ballard and Pee Dee Health Care. (R. pp. 1193-1195). "[Ballard] was not asked to represent Megna and no confidential information concerning Megna or his client was provided to her." (R. p. 81, ¶ 17). If Megna wanted to argue otherwise on appeal, he had an obligation to introduce into evidence the actual materials he submitted to Ballard in October 2010. He did not do so. Appellant has an obligation to furnish a record from which the appellate court can adequately consider his arguments. *Holme v. Holme*, 287 S.C. 68, 336 S.E.2d 508 (Ct.App. 1985).

Since Megna did not introduce the documents he transmitted to Ballard's law partner in October, 2010, the only evidence of record is Ballard's own statement that the materials submitted to her office by Megna did not create a conflict with her continued assistance to Truslow (R. pp. 290-291) and Judge Baxley's ruling that the cases in Richland (*Anasti)* and Darlington *Pee Dee Health Care)* were "completely unrelated to one another. Megna is the only common denominator." (R. p. 79, ¶ 6; R. p. 82, footnote 2).

According to Megna's Initial Brief, he learned that Truslow had consulted with Ballard in the *Anasti* case in May, 2011. (Initial Brief p. 6.) His initial brief states that

he also learned Truslow had spoken to other attorneys about the *Anasti* case when Truslow filed a motion with this Court at about that same time. (Initial Brief p. 2). He somehow jumped to the conclusion that if Truslow spoke to Ballard, and Truslow also spoke to other lawyers, then Ballard must have also spoken to the same other lawyers that spoke to Truslow.

In his initial brief, Megna actually states this as a fact. "Ballard did not disclose. . . that . . . Truslow and Ballard had conferred with Rene Josey and Jay James in the *Thompson* case (as well as with Celeste Jones and Bobby Stepp in the Lake City litigation). . ." (emphasis added) (Initial Brief p. 6). "It was only at this time that Appellant learned of Ballard's involvement with Truslow (and others.)" Initial Brief p. 7). "Ballard and Truslow had consulted with attorneys in the *Thompson* case and in the Lake City litigation." (Initial Brief p. 16).

There is no evidence in this record to support Megna's leap of logic that, since Ballard spoke to Truslow, she must also have spoken to other lawyers to whom Truslow had spoken. Megna's appellate brief cites to nothing to support these statements of "fact".

Additionally, there is no evidence in this record to support the conclusion, as stated in this Issue Seven, that Ballard "agreed to represent Appellant and Pee Dee." *See discussion, supra.*, at Page 2-3. (Appellant's Initial Brief p. 16). The evidence of record is Ballard's own statement that, when she received the subpoena from Megna in July, 2009, the *Pee Dee Healthcare* case (which was the caption on the subpoena issued by Megna) "was . . . a case [she] had never heard [of]. [She] had no idea what it was

about" (R. p. 284, lines 23-25) and she undertook efforts "to find out what this case was." (R. p. 285 line 2). If Megna or his counsel believe otherwise, they do so with absolutely no factual basis whatsoever.

Mark Matthews, who is believed to be associate of Megna's[14] filed two (2) grievances against Ballard, the first of which also complained about numerous other attorneys. (R. p. 1184; R. p. 1272). Among other things, Matthews complains about Ballard undertaking representation of Pee Dee Health Care, the same argument Megna now makes here. The complaints against Ballard were dismissed by the Office of Disciplinary Counsel. (R. p 287, line 9 – p. 288, line 4). The evidence reflects that Truslow consulted with Ballard for advice in dealing with the bizarre[15] actions that Megna was taking, and to determine how he should deal with them. (R. p 285, lines 18-23). He also sought her assistance with appellate issues. (R. p. 285, line 23 – p. 286, line 11). When Megna found out Ballard was assisting Truslow, he sent her a "very nasty" letter. *Id.* (R. p. 845). The grievances from Mark Matthews were apparently for the same purpose.

Ballard advised the Court that she was "under attack as a result of having provided legal advice and counsel to Mr. Truslow." (R. p. 287, lines 23-25). Judge Baxley concluded that the attack against Ballard was undertaken by Megna "to punish her for consulting with Truslow. . . and to deter her from continuing to assist him." (R. p. 82, ¶ 19).

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[14] Ballard learned that Mark Matthews was an employee of Megna's when she received a check for her appearance as subpoenaed by Megna. (R.p. 434)

[15] The court reporter inadvertently transcribed Ballard's statement as "bazaar." (R. p. 285, line 21).

The attack continues with the filing of Megna's initial brief. There is no evidence to support the irrational allegations Megna continues to assert against Ballard.

Additional Sustaining Ground

Megna did not appeal an alternate basis for Judge Baxley's decision to assess sanctions against him. Under the "two-issue" rule, even if Megna is correct on any of the issues he has argued, the orders on appeal must be affirmed.

Among other grounds for sanctions which were sought by Ballard, she asserted that the subpoena served upon her by Megna did not comply with the South Carolina Rules of Civil Procedure specifically Rule 45 (a)(2) and (b)(2), as well as Rule 26(b)(1).. (R. p. 437, ¶¶ 1 – 2; R. p 421, ¶ 4). This issue was argued before Judge Baxley. (R. p. 285, lines 13-15; R. p. 290, lines 4-7).

As far as Ballard can tell, neither Megna or his attorneys have ever disputed that the subpoena served on Ballard violated the SCRCP.

When a trial court decision is based on more than one ground, the appellate court will affirm unless the appellant seeks review of all grounds which formed the basis of the trial judge's decision. *McKinney v. Pedery*, 406 S.C.1, 749S.E.2d 119 (Ct.App. 8-14-2013); *Miranda v. Nisson Motor Co. Ltd.*, 402 S.C. 577, 741 S.E.2d 34 (Ct.App. 2013).

This Court need not consider any of Megna's arguments, even the ones that are preserved, because Megna has failed to appeal Judge Baxley's ruling that the subpoena served on Ballard violated the SCRCP.

Conclusion

The issues raised by Megna in this appeal are without merit. In addition, no relief should be afforded to Megna because he has failed to appeal the second ground upon which Judge Baxley relied in assessing sanctions against him.

Desa Ballard, *pro se*
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

Pro Se

April 9, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge
Civil Action: 2007-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Civil Action: 2010-CP-16-0332

Case Number: 2013-001461

Ex Parte: Douglas N. Truslow, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
James Anasti, Plaintiff,

v.

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

And

Ex Parte: Desa Ballard, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

BRIEF OF RESPONDENT DOUGLAS N. TRUSLOW

Douglas N. Truslow
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Ex Parte Respondent

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STATEMENT OF ISSUES ON APPEAL

I. Whether Appellant Megna was entitled to repeatedly disobey the lower court's orders disqualifying him on the ground that he had filed a motion to reconsider. (Appellant's Argument #1)

II. Whether the lower court erred in finding and concluding that Respondent Anasti's March 9, 2012 motion to quash was not previously decided by the Court of Appeals. (Appellant's Argument #2)

III. Whether the March 9, 2012 motion to quash before Judge Baxley on May 15, 2012 was the same as the motion for sanctions (against Appellant) filed November 7, 2007. (Appellant's Argument #3)

IV. Whether Appellant was entitled to misuse the discovery process in violation of the terms of his disqualification, with no client, in violation of the bankruptcy court's orders and with no authority. (Appellant's Argument #4)

V. Whether sanctions may be issued by a court under appropriate circumstances. (Appellant's Argument #5)

VI. Did evidence exist reflecting that Appellant Megna misused the "discovery process". (Appellant's Argument #6)

VII. Whether Appellant Megna acted in "good faith".

STATEMENT OF THE CASE

Appellant Tony R. Megna ("Megna") has filed two separate appeals relative to sanctions imposed upon him in two separate, distinct cases originating in two separate and distinct counties. One case ("Anasti") was in Richland County. (R. pp. 90-102) The other case ("Thompson") was in Darlington County.[1] (R. pp. 77-89) The cases were distinct and involved no common questions of law or fact. The attorneys involved were separate and distinct. The common denominator in these cases has been Megna, as he has conceded. (R. pp. 641-654; at 649)

From the time of his initial appearance in Anasti, until his representation ended with the conclusive loss of her appeal, Megna was the attorney for Defendant Gina Lee (hereinafter "Lee").[2]

In Thompson, Megna was disqualified to act as attorney for Pee Dee Health Care ("PDHC").[3] (R. pp. 55-63). The terms of disqualification were repeated thereafter

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[1] Thompson has never been in Florence County, despite Megna's assertions to the contrary in his brief. However, Megna has been involved in multiple, unrelated cases in Florence County. (R. pp. 1334-1338) He filed an appeal from the dismissal of one Florence case wherein he had sued attorneys Celeste Jones, LeRoy Nettles, the McNair Law Firm, et al. That appeal was dismissed in that Megna did not timely pursue it, even after multiple extensions. (R. pp. 1334-1337)

[2] Lee, represented by Megna, lost at summary judgment and then appealed. The appeal was remanded for a determination of Megna's timeliness. Upon the appeal being twice determined on remand to have been untimely, Megna continued to appeal and then filed for bankruptcy, ostensibly on Lee's behalf. The appeal Megna had filed was thus stayed. Thereafter, over Megna/Lee's objection, the Bankruptcy Court lifted the bankruptcy stay so that Lee's appeal was required to be abandoned or pursued. The Bankruptcy Court limited the scope of Megna's representation of Lee in Anasti to concluding her appeal. Megna was not authorized to charge Lee for the State appeals he was pursuing. (R. pp. 851-853 at 853) Megna's representation of Lee in Anasti ended with his loss of all Lee's State appeals. Further, Lee averred in her 2012 affidavit that upon the loss of all her State appeals Megna no longer represented her, was not acting for her in Anasti, was not acting with her permission or at her request. (R. pp. 814-815)

[3] Megna has been the author of at least six prior appeals in these two cases, plus multiple bankruptcy appeals, plus being either and/or both a party and acting as the attorney in numerous unrelated cases in Florence County as well as in a Federal case involving PDHC. (PDHC v. Governor Sanford, et al., Fourth Circuit Court of Appeals)

As a result of separate motions in Anasti and Thompson relative to alleged attorney misconduct by Megna (a) in Anasti after his representation of Lee had ended and (b) in Thompson after to his disqualification, a consolidated Anasti/Thompson sanctions hearing was held by the Circuit Court on May 15, 2012. Sanctions orders were rendered against Megna in each case on February 11, 2013 (R. pp. 77-102) In Anasti, a monetary sanction in the sum of $31,842.39 was rendered against Megna. Megna was also ordered to report to the Office of Disciplinary Counsel. In Thompson, monetary sanctions were independently rendered against Megna. Megna was again ordered to report to the Office of Disciplinary Counsel. Megna filed motions to alter or amend the two sanctions orders issued against him. Each motion was denied on June 12, 2013. (R. pp. 120-125) Megna has appealed the two sanctions orders against him. Megna's appeals of the two sanctions orders were consolidated by the Court of Appeals on July 10, 2013, with each of Respondents filing separate briefs.

To the degree allowed, Respondent herein incorporates by reference the Statement of the Case and arguments set forth by Ms. Ballard.

ANASTI CASE/RICHLAND

Anasti is a case in which Plaintiff James Anasti brought suit against Lee, Wilson and Goodwin and the Richland County Clerk of Court.[4] The action involved disputed ownership of real estate and claims of damages. (R. pp. 174-178) Megna filed an answer and counterclaim on Lee's behalf asserting, *inter alia*, that despite selling Plaintiff's property to Wilson and Goodwin, she still owned it [sic]. (R. pp. 186-199) Wilson and

[4] The Clerk of Court was merely a stakeholder of certain funds paid into the court relating to a SCDOT condemnation action. The Clerk of Court has paid those funds to Plaintiff Anasti and has no further interest. Wilson and Goodwin have settled their differences with Plaintiff Anasti and likewise have no interest in this appeal.

Goodwin alleged that they had in good faith bought the property from Lee by way of "owner financing", believing her at the time to be the owner, but that when they later learned that Lee did not in fact own the property she had sold to them, they sued her. (R. pp. 179-185) They further asserted in their answer that a decision favorable to Plaintiff would bolster their fraud and other claims against Lee in a separate, previously filed lawsuit they had initiated against Lee for selling them the property they subsequently discovered she did not own. (R. pp. 143-156) Wilson and Goodwin remained on the property to Lee's exclusion through the time Megna/Lee's petition for writ of certiorari was denied in October, 2011.

On October 26, 2007, and over Lee's opposition, the Circuit Court granted Plaintiff Anasti summary judgment against Lee, Wilson and Goodwin as to his ownership of the real estate at issue ie. declaring Plaintiff to be the sole owner. The summary judgment order contained a provision directing that a damages hearing against Lee, Wilson and Goodwin was to follow at a subsequent date. Throughout the discovery process and at the summary judgment hearing, Wilson and Goodwin did not contest that Plaintiff was the true owner of the real estate in question. Only Lee contested it. The summary judgment order was filed on October 26, 2007 and then duly transmitted to respective counsel. (R. pp. 1-10; 15-19 at page 16 #2; 22-32 at page 23, II)

On November 7, 2007, within ten days of receipt of the summary judgment order, Plaintiff filed a Rule 11, SCRCP, motion for sanctions against Megna. (R. p. 340)

On November 21, 2007, Megna filed a motion for reconsideration of the summary judgment order, *to wit*: a motion pursuant to SCRCP 59(e). Megna did not allege late receipt of the order granting summary judgment. Megna's Rule 59(e) motion was denied

on December 6, 2007. At the time of denial, the Circuit Court questioned Megna's timeliness.

Plaintiff's Rule 11 motion and other motion for sanctions against Lee and Megna was scheduled to be heard on January 8, 2008. (R. p. 1072)

On January 4, 2008, and purporting to act on behalf of Lee, Megna filed a notice of intent to appeal the grant of summary judgment to Plaintiff. In conjunction, Megna asserted that neither the Rule 11 sanctions hearing nor the damages hearing could be conducted while the appeal remained outstanding.

By order dated January 8, 2008, both the Rule 11 sanctions hearing and the damages hearing were stayed during the pendency of Lee's appeal. (R. p. 11) The Circuit Court reiterated on May 28, 2008 that Plaintiff Anasti's motion for sanctions remained stayed while the case was pending on appeal.

On January 22, 2008, Plaintiff (Respondent on appeal) moved for dismissal of Megna/Lee's appeal as untimely and hence jurisdictionally defective. Megna admitted he had received the court's order. He contested that he had been untimely. Each side submitted evidence and memoranda supporting their respective assertions.

The issue of timeliness of the appeal filed by Megna on Lee's behalf was remanded to the Court of Common Pleas (hereinafter "Circuit Court") on March 18, 2008, with an indication that it should be heard as soon as possible.

The remand hearing was duly set and then conducted by the Circuit Court on April 3, 2008. Megna did not appear and could not be accounted for. Nonetheless, the Circuit Court considered the entire file, including the Clerk's file reflecting on the mailing of the order in question. Megna's affidavits and all other documents, memoranda and arguments

Megna had submitted were and/or relied upon. After a thorough review, Circuit Court determined that Megna was untimely in filing the appeal. The Circuit Court further found that Megna had been untruthful, had made gross misrepresentations to the courts as to the issues and that he had unjustly attacked opposing counsel. (R. pp. 14-19)

Upon the Circuit Court's April 3, 2008 order being filed, the Court of Appeals, dismissed the appeal. Thereafter, Megna alleged that he had not received proper notice for the remand hearing; he sought to reopen Lee's appeal and have the Circuit Court's April 3, 2008 order reconsidered. The Court of Appeals provided Megna with yet another opportunity to make whatever timeliness arguments he might wish to make; Lee's appeal was reinstated, and then remanded to the Circuit Court once again for a second determination of timeliness. A second hearing was thereafter held relative to the issue of Megna's timeliness in perfecting Lee's appeal. The Circuit Court again found and concluded in its order dated April 1, 2009 that Megna's appeal was untimely. (R. pp. 22-32) In conjunction, Megna was once again found by the court to be untruthful. Megna's excuses for failure to attend the April 3, 2008 hearing were found by the court to have been contrived.

In response to the Circuit Court's April 1, 2009 order, Megna/Lee filed another appeal on April 15, 2009 (actually two of them – relating to the Circuit Court's two remand orders dated April 3, 2008 and April 1, 2009 -- finding Megna to have been untimely in filing Lee's appeal).

On April 15, 2009, Megna/his law partner Benjamin Matthews ("Matthews") filed a debtor bankruptcy action, ostensibly on Lee's behalf.[5] Megna did not timely

[5] Megna and Matthews represented Lee throughout all her bankruptcy proceedings (see bankruptcy action 09-02854-JW; readily available on PACER). The word "ostensibly" is used in that the effect of Lee's

communicate that event (bankruptcy filing) to the Court of Appeals. Lee's appeal was once again dismissed as untimely, based on the filing of the Circuit Court's April 1, 2009 second remand order, determining that Megna had been untimely in filing Lee's appeal.

The legal effect of Lee's debtor bankruptcy filing was that the second dismissal of Lee's appeal(s) had to be set aside and then held in a state of abeyance because it had been subjected to what is commonly known as a Title 11 United States Code "§362" stay, retroactive to the date of Lee's bankruptcy filing. Thus, the dismissal of the appeal, as well as the sanctions motion against Megna, was further delayed.

Represented by attorney Steven Licata solely for bankruptcy purposes, Plaintiff petitioned the Bankruptcy Court to lift the bankruptcy stay, so that Lee's/Megna's State appeal(s) could be concluded. Over Lee's/Megna's/Matthews' objections, Plaintiff's petition to lift the bankruptcy stay was granted on November 9, 2009. (R. pp. 33-40) Under the terms of the Bankruptcy Court's order(s), Megna was not authorized to proceed further on Lee's behalf in Anasti, other than to conclude her State appeal(s). (R. pp. 851-853)

On February 24, 2010 Megna/Matthews wrote a letter and also sent three emails to the Bankruptcy Court, Lee's Bankruptcy Trustee, attorneys and others, representing that the two remand orders of the Circuit Court (Judge Manning - dated April 3, 2008 and April 1, 2009 -- finding and concluding that Megna had been untimely in filing Lee's appeal) had been disregarded, set aside, reversed, and vacated by the Court of Appeals. (R. pp. 718-722) Megna/Matthews' claims were not true.

Lee was determined to be bankrupt and her plan approved on or about April 16, 2010.

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multiple appeals, multiple bankruptcy filings and multiple bankruptcy appeals was to delay now for years the resolution of the November 7, 2007 sanctions motion against Megna.

Upon it being established that the bankruptcy stay relative to Lee/Megna's appeals in Anasti had in fact been been lifted (R. pp. 48-50), the South Carolina Court of Appeals directed that both the record on appeal and briefs were to be limited to the threshold, jurisdictional issue of timeliness of Lee's appeal(s). (Supp. R. pp. 7-8) After considerable legal wrangling, briefs were ultimately submitted. Upon receipt of the final briefs in mid March, 2011, the Court of Appeals dismissed Lee's appeal(s) on April 1, 2011. (R. pp. 52-54) The appeal was dismissed on the basis of Megna's untimeliness as a threshold matter. The merits were never addressed. Plaintiff/Respondent Anasti then submitted a claim for Rule 269, SCACR sanctions, limited to the time expended during the appeal only. The Court of Appeals did not grant relief under Rule 269.[6]

From the loss of Lee's appeal, Lee/Megna filed a petition for writ of certiorari in the State Supreme Court. Lee/Megna's petition was denied. Given Lee's bankruptcy, in conjunction with the Bankruptcy Court's orders and Lee's loss of all appeals, Lee has had no further interest in Anasti since that time.

Anasti was directed to be remitted to the Circuit Court on or about October 7, 2011. At that point, the Rule 11 motion for sanctions against Megna filed November 7, 2007 was ripe for resolution.[7] As well, the damages hearing against Wilson and Goodwin was then ripe for resolution. Lee was eliminated in light of her bankruptcy.

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[6] While no reason was given, lack of jurisdiction is the logical conclusion. It would otherwise be difficult to imagine that the Court of Appeals would have approved of Megna's misconduct, given the record before it of repeated findings of his gross misrepresentations to the courts, coupled with another Circuit Court's observation that Lee's defense presented by Megna was a "flim-flam" (R. p. 232, lines 9-12), that "You [Megna] are talking out of four sides [of your mouth] to me" (R. p. 228, lines 16-18) and the separate conclusions of the Bankruptcy Court and the District Court in their orders -- a tortured history of legal machinations by Megna to avoid the consequences associated with his failure to timely appeal. (See especially the order dated January 15, 2010, R. pp. 704-707) Further, the thrust of Respondent's brief was that there was no jurisdiction for Lee's/Megna's appeal as a threshold matter.

[7] Given that Lee was no longer involved, Plaintiff moved to delete Lee from the Rule 11 sanctions motion, and reiterated an intent to proceed against Megna (R. pp. 441; 554-555; 563-565).

On November 1, 2011 Plaintiff requested of the Circuit Court a status conference so that the outstanding damages hearing (not involving Megna or Lee) and the outstanding Rule 11 sanctions motion (against Megna) could be scheduled. (R. pp. 554-555) Megna submitted a letter (with attachments) to the Circuit Court on November 3, 2011 opposing any status conference. Megna asserted that: (a) all matters in Anasti remained stayed by virtue of Lee's bankruptcy, (b) Plaintiff had lost the case in the Court of Appeals, (c) the Court of Appeals had ruled adversely to Plaintiff relative to his damages claims, as well as the November 7, 2007 motion for Rule 11 sanctions, and (d) there was nothing left for resolution. (R. pp. 1170-1180 and Exhibits also attached out of order at R. pp. 556-562)

A status conference was held by the Circuit Court on January 18, 2012. (R. pp. 241-259 at page 243, lines 3-7) At that time, it was reconfirmed that neither damages nor sanctions were being pursued against Lee, given her bankruptcy. (R. p. 244, line 18-p. 247, line 2) The court stated that Plaintiff's damages hearing (involving Plaintiff and Defendants Wilson and Goodwin alone) would be heard, most likely in mid-March, 2012 and that Plaintiff's Rule 11 sanctions motion against Megna was expected to be heard thereafter. At the status conference, Megna confirmed to the court that neither he nor Lee were involved or interested in the damages hearing. (R. p. 246, line 25-p. 247, line 2) Wilson and Goodwin did not express a desire or need for any further discovery. [8] Wilson and Goodwin's attorney alerted the Circuit Court at that time that he was ill and may be unable to participate in the damages hearing.

Plaintiff's damages hearing was thereafter scheduled to be heard on March 12, 2012. In late February, 2012, Megna discovered that Wilson and Goodwin's attorney (Mr.

[8] Megna had filed a motion on September 11, 2007 asserting that all discovery was complete and that both he and Lee were unwilling to engage in it further. (R. pp. 1156-1162 at page 1162; 551-552)

Earle) was hospitalized, in a coma and would have to withdraw from legal representation of them. (R. p. 577) On or about February 27, 2012, Mr. Earle's law partner sought and received authority for Mr. Earle and his law firm to be relieved from the representation of Wilson and Goodwin. Wilson and Goodwin were given until the end of March, 2012 to engage substitute counsel. (R. pp. 74-76; 663-666) The damages hearing was continued.[9] By that point, Wilson and Goodwin had received an award against Lee in excess of $216,000 in their lawsuit heretofore characterized as the "companion cases". (R. pp. 200-219) Megna represented Lee in that case.

In the order continuing the damages hearing, and with Megna's concurrence, it provided that "Megna is not involved nor is his client in this aspect of the case". (R. p. 74)

Upon being informed that Wilson and Goodwin's counsel, Mr. Earle, was in a coma and would not be able to participate in the damages hearing, Megna sent emails, letters, subpoenas and subpoenas duces tecum, interrogatories, requests to produce, and notices for depositions to Plaintiff's counsel and to Mr. Earle. Megna asserted that he was doing so for the damages hearing (R. p. 646) and purporting to be doing so on Lee's behalf and independently for Plaintiff [sic]. Continuing until March, 2012, Megna served subpoenas and other discovery on various persons. (R. pp. 577-638; 424-433) Megna's subpoenas were initially from Darlington County, but later reissued by him from Richland County. Megna sought to depose the bankruptcy attorney (Mr. Licata), Plaintiff's counsel (Respondent), Respondent's paralegal, and to retake the deposition of Plaintiff. Megna

[9] Subsequently, Wilson and Goodwin engaged substitute counsel and thereafter confessed judgment in favor of Plaintiff as to damages.

noticed the depositions to be taken at the exact same time on less than ten days notice.[10] Megna's subpoenas were subpoenas duces tecum. He sought information relative to PDHC, the Thompson Defendant's attorneys and the Thompson case – in which he had previously been disqualified as attorney for PDHC. As well, Megna attempted to serve discovery on Wilson and Goodwin and require compliance while they were without counsel and otherwise to be protected. In his various discovery submissions under the auspices of Anasti, Megna sought information relative to Mr. James, Mr. Josey, Ms. Jones, Kenneth Woodington and Desa Ballard, PDHC, Medicare and Medicaid records, matters regarding unrelated cases in Federal court and matters involving Megna and/or PDHC in other jurisdictions and venues, including Thompson. Megna threatened that, if the discovery he claimed to be seeking for the damages hearing against Wilson and Goodwin was not forthcoming, he would file for contempt sanctions against Anasti's counsel. (R. p. 580)

On March 9, 2012, Plaintiff Anasti/Plaintiff's counsel/Respondent herein filed a motion to quash and for protection. (R. pp. 444-508) In conjunction, sanctions were sought against Megna. At that point, Ms. Ballard had requested that her pending sanctions motion against Megna filed in Thompson, addressed *infra* and by Ms. Ballard separately, also be heard. Upon notice that the court was prepared to set a consolidated hearing date on May 15, 2011 as to Plaintiff's March 9, 2012 motion in conjunction with Ms. Ballard's outstanding motion against Megna in Thompson (R. pp. 981-982), Megna emailed the court an unsolicited letter and "Synopsis" on March 19, 2012. (R. pp. 640-654) In his

[10] At that time, Megna asserted that Plaintiff lived out of the country, but Megna sought to retake his deposition on less than ten days notice nonetheless and without seeking consent or court approval to retake it.

Synopsis, Megna asserted that a) the Court of Appeals had previously both addressed and denied Respondent's March 9, 2012 motion in Anasti, b) there had been no discovery as to damages in Anasti and that he needed it; and c) that he (Megna) was acting on behalf of the "unrepresented Defendants" (Wilson and Goodwin) as to the pending damages hearing in Anasti. In addition in his Synopsis, Megna leveled claims of unethical conduct on the part of a number of attorneys, spanning different cases.[11] Although remaining disqualified, Megna moved in his Synopsis that the court disqualify Defendant's counsel (Mr. Josey and his law firm) in Thompson.

In support of his March 9, 2012 motion and to refute Megna's Synopsis, Respondent filed, served, requested judicial notice and made a part of the record comprehensive evidence reflecting on the issues to be addressed at the May 15, 2012 scheduled hearing. (R. pp. 509-817) It included: Respondent's affidavit with detailed time records (R. pp. 788-800; 1111-1137); the affidavit of Lee stating that Megna was not representing her or acting on her behalf (R. pp. 814-815); an affidavit of a legal assistant in Respondent's attorney's office in which time expended by Plaintiff's counsel had been verified (R. pp. 801-809); an affidavit of Plaintiff Anasti; an affidavit of Ms. Ballard verifying that the fees sought by Plaintiff's counsel were appropriate (R. pp. 1133-1137); detailed memoranda (R. pp. 509-817), billing records submitted relative to a Rule 269 motion. As well, Respondent asked that the court take judicial notice of the Clerk of Court's files in Anasti (and its appeal), the Darlington case (Pee Dee Health Care, P.A. v.

[11] Megna had previously submitted a reply to the State Supreme Court in Anasti indicating that opposing counsel and others were "engaged in inappropriate behavior that is the subject of pending subpoenas and motions for enforcement of the subpoenas in another action pending before the Darlington County Court of Common Pleas". The case referred to was Thompson. The subpoenas and other actions Megna referred to were those done by Megna **subsequent** to his disqualification.

Estate of Hugh S. Thompson, 2010-CP-16-0332 (Thompson)) and any relevant appeal(s); the "Florence cases" (Lake City Community Hospital, et al. v. Tony Megna, Benjamin R. Matthews, et al., 2008-CP-21-706); Matthews, Megna, et al. v. Celeste Jones, Leroy Nettles, et al., 2011-CP-21-841); the "companion case(s)"; and Lee's bankruptcy case (and appeals).

The March 9, 2012 motion came to be heard on May 15, 2012. In conjunction with his "Synopsis", Megna submitted a memorandum at the hearing. (R. pp. 818-1029)[12] In that memorandum, in an email to the court by Megna's counsel (R. Zmroczek email of May 14, 2012 – Supp. R. pp. 87-88) and at the hearing, the contentions argued by Megna as to why Respondent's March 9, 2012 motion should not be granted were that a) Respondent did not submit an affidavit as to "damages" and b) that the Court of Appeals had previously addressed the March 9, 2012 motion and had ruled adverse to Anasti [sic].[13] [14] Megna submitted no affidavits.

THOMPSON CASE/DARLINGTON

Thompson was filed in Darlington County by Megna on behalf of Plaintiff Pee Dee Healthcare ("PDHC") against the Estate of Thompson. Megna was at all pertinent times CEO of PDHC, and he held himself out as its attorney as well. PDHC was suing the estate of one of its deceased employees for money damages. The case had at its core Medicare and/or Medicaid issues. (R. pp. 55-63) Thompson had been commenced by Megna in

[12] The memorandum referenced a motion filed by Megna, but no such motion has ever been filed or served on either Respondent.

[13] Neither a damages hearing (against Wilson and Goodwin alone), nor the November 7, 2007 motion for sanctions, was before Judge Baxley. Likewise, the March 9, 2012 motion had obviously never been before the Court of Appeals.

[14] On May 29, 2012, Megna mailed to the court a memorandum. Megna then said he was not going to utilize or file it, but has nonetheless designated it for appeal.

Probate Court. Upon denial of PDHC's claims, PDHC appealed to the Circuit Court. Estate of Thompson asserted, *inter alia*, that a) the appeal Megna filed on PDHC's behalf to the Circuit Court was untimely, and b) an administrative law court decision had previously and dispositively concluded that PDHC's claim was without merit. Estate of Thompson's counsel were John "Jay" James and J. Rene Josey. Mr. Josey is a partner in Turner Padgett Law Firm.

Estate of Thompson filed a motion to disqualify Megna from representing PDHC on or about January 28, 2011. Megna filed a response on March 11, 2011. (R. pp. 740-745 and Supp. R. pp. 73-80) A hearing on the motion to disqualify Megna was held on March 16, 2011. The court ruled that Megna was disqualified, with a formal order to follow.

Megna was disqualified to act as an attorney for PDHC in Thompson by order dated April 15, 2011. (R. pp. 55-63) Megna filed a motion to reconsider on May 2, 2011. Counsel for Estate of Thompson filed a response on May 20, 2011. Megna filed a Reply on May 26, 2011. At that time, motions for summary judgment were outstanding. Despite multiple attempts, Megna could not be reached to schedule outstanding motions, including Megna's motion to reconsider his disqualification. (R. p. 1074) In its June 17, 2011 order, the court provided notice for a hearing date of July 19, 2011 as to Megna's motion to reconsider the order disqualifying him and outstanding summary judgment motions. The court reconfirmed Megna's disqualification, but indicated that he would be permitted to appear on PDHC's behalf for the limited purpose of to the summary judgment hearing, prior to the court ruling upon Megna's motion to reconsider his disqualification.

Megna was once again put on notice of the terms of his disqualification at the July 19, 2011 hearing. Thereafter, Megna was put on notice that the court intended to grant

summary judgment adverse to PDHC, as well as to deny Megna's motion to reconsider his disqualification, with formal orders to follow.

Under the auspices of Thompson, subsequent to July 30, 2011, Megna served subpoenas and subpoenas duces tecum on non-party Desa Ballard, the Thompson Defendant's attorneys and other attorneys in unrelated cases. (R. pp. 424-435; 437-438) In the subpoenas, Megna sought discovery regarding PDHC and matters relating to Anasti. In the subpoena he served upon Ms. Ballard, Megna sought communications by and between her and other attorneys, including: Mr. James, Mr. Josey, Kenneth Woodington, Douglas Truslow, Mr. Licata, Andrew Savage, Magistrate Judge Caroline Streater, Ashley Stratton, and lawyers in the McNair Law Firm and/or their agents; lawyers in Turner Padgett Law Firm and/or their agents, Thomas Earle and Curtis Dowling.[15]

Upon receipt of the subpoena and subpoena duces tecum issued by Megna, Ms. Ballard filed a motion to quash and for sanctions on or about August 4, 2011. Estate of Thompson's attorneys filed similar motion(s) as did other attorneys who had been served with subpoenas by Megna. Respondent in Anasti also objected to Megna's subpoenas that had been served upon him under the auspices of Thompson.

[15] Mr. Woodington had previously represented a party adverse to PDHC in a separate matter (PDHC v. Gov. Sanford, et. al.) that had nothing to do with Anasti, Thompson or the Florence cases. Mr. Savage is an attorney in Charleston and had nothing to do with any of the cases. Judge Streater is a Richland County Magistrate Judge who has had no involvement with Thompson, Anasti or any other related cases. Ms. Stratton is an attorney. Mr. Truslow, Ms. Ballard, Mr. Earle, Mr. Dowling and the McNair Law Firm had no involvement in Thompson. Megna had (personally) sued the McNair Law Firm and one of its attorneys, Celeste Jones (and other attorneys), in an unrelated Florence case(s) in which they and Megna were involved. Mr. Earle was only involved in Anasti and a separate case(s) in which Megna was opposing counsel. Mr. Dowling was involved in a separate case(s) as opposing counsel, wherein Megna had sued a lawyer for malpractice. Neither the undersigned nor Ms. Ballard were involved as attorneys in any of those cases.

On August 11, 2011, Megna filed a "Plaintiff's Reply to Motion for Protective Order, Request for Subpoena [sic] and for Attorney's Fees and Costs". As well, he wrote to the court purporting to remain the attorney for PDHC.

Megna sought (a) to have the court disqualify the Thompson defense counsel, (b) to have the court enforce the subpoenas issued by Megna subsequent to his disqualification, (c) to have the court sanction one of Mr. Josey's law partners who had withdrawn from the representation of PDHC in an unrelated workers' compensation case, and (d) to have the court issue an order finding that the Thompson defense attorneys were unethical in objecting to subpoenas issued by Megna after his disqualification.

On August 12, 2011, the court indicated that it was granting summary judgment to PDHC's opposing party in Thompson, with a formal order to follow. In a separate order dated August 12, 2011, the court denied Megna's motion for reconsideration of his disqualification and *sua sponte* quashed all motions, subpoenas and filings signed only by disqualified counsel Megna issued after June 17, 2011. (R. pp. 67-68) PDHC's remaining counsel (Megna's law partner Matthews) was directed to personally serve a copy of the court's order on all parties affected by the court's decision.[16] The formal order granting summary judgment to Estate of Thompson and against PDHC was signed on September 1, 2011. On September 13, 2011, Megna filed a motion for reconsideration of the order granting summary judgment. On September 28, 2011, the court dismissed Megna's motion for reconsideration of the order granting summary judgment as improper, in that he remained disqualified. (R. pp. 69-70)

[16] It does not appear that Matthews or Megna and Matthews ever honored the Court's directive.

Megna's disqualification was acknowledged by him in a letter to the court on October 10, 2011. Megna represented that he would not further violate the court's order of disqualification.[17] The court in turn acknowledged Megna's letter and congratulated him for making that decision.

On behalf of PDHC, Megna appealed the court's September 1, 2011 order granting summary judgment. Megna filed the appeal on or about October 28, 2011.

Megna actually filed three appeals on PDHC's behalf in Thompson. One related to Megna's disqualification. Another appeal related to the grant of summary judgment to PDHC's opposing party/Estate of Thompson. The third appeal related to a determination that Megna had been untimely in appealing the underlying probate matter.

Megna/PDHC lost all appeals. (R. p. 134; Supp. R. pp. 19-25)[18]

While Thompson was on appeal and subsequent to his disqualification, Megna issued subpoenas in February and March, 2012, utilizing Anasti as a platform to, *inter alia*, engage in discovery relative to PDHC, Thompson Estate's attorneys and other cases and other attorneys in other separate cases in which Megna and/or PDHC was or had previously been involved.

Subsequent to the filing of the undersigned's March 9, 2009 motion(s) for protection and sanctions against Megna, a consolidated sanctions hearing with Ms.

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[17] Despite that representation, Megna continued to do what he represented to the court he would not do by virtue of, *inter alia*, later seeking to have Mr. Josey disqualified and sanctioned (See Megna's Synopsis dated March 19, 2012 – R. p. 648c).

[18] On July 3, 2013, the Court of Appeals determined that Megna's appeal from the probate matter was untimely. Likewise, the Court of Appeals determined that Megna's appeal on PDHC's behalf was untimely and Megna's motion(s) were found and concluded to have been void *ab initio;* that Judge Baxley's orders were correct. Furthermore, while determining that Megna's appeal was otherwise moot based on untimeliness and to be dismissed, the Court of Appeals found and concluded that the Lower Court did not err in disqualifying Megna.

Ballard's motion for sanctions against Megna in Thompson was scheduled to be held on May 15, 2012. The procedure to be followed was outlined by the court. (R. pp. 1198-1199) No objection was entered by Megna to the form, format or procedure to be followed for the hearing.

In addition to the documents, affidavits and matters submitted for Anasti, affidavits supporting Ms. Ballard's motion were filed. Megna did not file any affidavits.

The court issued its orders sanctioning Megna in both Anasti and Thompson. This consolidated appeal follows.

STANDARD OF REVIEW

A trial judge's ruling relative to sanctions will not be disturbed absent a clear abuse of discretion. Russell v. Wachovia Bank, N.A., 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006); Culbertson v. Clemens, 322 S.C. 20, 24, 471 S.E.2d 163, 165 (1996). On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support. Tirado v. Tirado, 339 S.C. 649, 530 S.E.2d 128 (Ct. App 2000); Stone v. Reddix Smalls, 295 S.C. 514, 369 S.E.2d 840 (1988).

LEGAL ARGUMENTS

ADDRESSING APPELLANT'S ARGUMENT 1:

Whether Appellant Megna was entitled to repeatedly disobey the lower court's orders disqualifying him on the ground that he had filed a motion to reconsider.

Megna's argument initially appears to be limited to his misconduct in Thompson. However, because there is some overlap. The argument is addressed and for that reason, Respondent included in his brief a detailed history of the proceedings.

To the extent Megna would suggest that his argument relates to Anasti, Respondent adopts and incorporates the argument of Ms. Ballard in her Thompson brief.

Setting aside Megna's failure to preserve the issue, and because Megna's argument attempts to make a lateral correlation to Anasti, this supplement is added. It relates to all arguments and is to be incorporated by reference. The sequence of events clearly established that Megna was using Thompson **after** his disqualification as a subterfuge to gather self-serving information relative to Anasti and, *vice versa,* using Anasti, in which he had no client or further interest in acting in her behalf for the purposes of Thompson. Neither Megna's motion to reconsider nor an appeal by PDHC in Thompson in 2011 would authorize Megna to thereafter use Thompson as a basis to engage in discovery in Anasti in February and March, 2012, much less to attempt to surreptitiously use Anasti to engage in discovery in Thompson after Megna's disqualification or during the Thompson appeal. Moreover, when he sought discovery in Anasti under the auspices of Lee's name, he had no client. His representation of Lee had been restricted by the Bankruptcy Court's orders lifting the bankruptcy stay. Megna did not have Lee's permission or approval to act at that stage and was exposing her to risk for sanctions, had she actually approved of Megna's conduct at that stage after loss of her appeals, coupled with her bankruptcy. Notably, Megna did not file a motion on his own behalf for discovery in Anasti. And, he did not seek court permission, much less an agreement of respective counsel, to have PDHC intervene in Anasti. Simply stated, Megna's argument is internally contradictory and meritless. There was substantial evidence supporting the findings and conclusions of the lower court. The facts and events are significant: In July and August, 2011, Megna utilized the purported aegis of Thompson as a basis upon which to obtain discovery directed at Ms.

Ballard in that she had provided assistance to Respondent on an appeal issue involving Anasti. Further, in his discovery submissions, Megna sought to impose upon numerous attorneys who had nothing to do with the case. At the time, Megna was clearly disqualified from acting as the attorney for PDHC in Thompson. He did not seek the court's permission to violate, suspend or set aside the court's prior order(s) disqualifying him. He acted at his own peril. Given the inflammatory claims of Megna in his reply to the motion in Thompson to have him disqualified, the conclusion is that he has had a long pattern of simply attempting to harass those who may not agree with his tactics. Megna had been repeatedly advised that he was disqualified in Thompson. Megna remained disqualified in Thompson, yet he continued to flaunt his legal responsibility to obey the court's orders and directives. By that point in time, Megna had no right to engage in discovery in Anasti - the Bankruptcy Court had limited Megna's involvement on his (former) client Lee's behalf to the conclusion of the appeal. The reasons for the Bankruptcy Court to do so are obvious and contained in the Bankruptcy Court's orders. Ploys being utilized by Megna appeared to be a disingenuous attempt to cover up for the consequences of him having been untimely in filing an appeal in the first instance; that he was unlikely to be successful on appeal in any event and that no trustee or creditor has ever supported his contentions.

Lee's appeal in Anasti had previously been determined by the Court of Appeals to have been untimely filed by Megna; the appeal was dismissed in April, 2011. His motion for reconsideration and his petition for writ of certiorari were denied as well. Megna could not engage in discovery under the auspices of Lee's name in Anasti, so he resorted to a transparent attempt to utilize Thompson, doing so after his disqualification. He used the same type tactic in Thompson, knowing full well that he was disqualified. Furthermore, no

appeal orpost appeal discovery had been requested by Megna in either case, nor had any been authorized. Moreover, Megna had unequivocally and already repeatedly stated in September, 2007 that he and Lee had determined that no further discovery was appropriate; that neither he nor Lee would participate in it. In fact, Megna went to far as to file a motion to prohibit further discovery in Anasti on September 11, 2007. (R. p. 552) Megna did not seek court authorization for discovery after his petition for writ of certiorari was denied. It would have been unjustified to do so in that; (a) Lee's appeal was concluded, (b) no post appeal appearance by Megna (on Lee's behalf) had been authorized by the Bankruptcy Court – in fact the contrary had been expressed in its order(s), (c) Lee had no need for discovery as to any issue; in effect, Megna no longer had a client in Anasti at that point, and (d) he had virtually everything in the case he previously insisted he needed and he had no interest whatsoever in damages claims by Plaintiff Anasti against Wilson and Goodwin. If Megna was nonetheless seeking discovery for some other self-serving purposes, he needed, at a minimum to properly request it by way of motion in an appropriate court. He did not do so.[19]

Megna has repeatedly engaged in dilatory and contradictory conduct. His bad motives, bad faith, and repeated violation of the court's order of disqualification in Thompson for attempted use in Anasti is illustrated by his "Pethoner's [sic] Reply" in Anasti in the State Supreme Court dated August 10, 2011. Plaintiff/Respondent Anasti had at the time moved to expedite a resolution of Lee's petition for writ of certiorari filed by

[19] Megna has claimed he needed discovery as to damages, yet neither he nor Lee were in any way involved in damages issues in Anasti. And while Megna was fully aware of the reasons sanctions were being sought against him personally, he did not timely raise it as a basis for his misconduct. Finally, given his extensive involvement in the case since 2007 through 2012, he had virtually every document, including written explanations, affidavits and a detailed letter setting forth the circumstances. (R. pp. 1181-1183; 726-728)

Megna - precisely because the incessant delays that had been ongoing without a final resolution for over four (4) and a half years. In opposition to the motion seeking to perhaps hasten a final resolution, Megna asserted that;

> **"counsel and others are engaged in inappropriate behavior that is the subject of pending subpoenas and motions for enforcement of the subpoenas in another case pending before the Darlington County Court of Common Pleas..."**

The Darlington case referred to was Thompson. Notably, Megna was disqualified at that time, but he certainly did not disclose that fact to the Supreme Court.

Regardless of the fact that none of Megna's contentions ever had any merit, Megna cannot have it both ways. Megna knew he was disqualified from engaging in discovery and "motions for enforcement" in Thompson, yet Megna expressed an intent in the Supreme Court in Anasti to actively continue to do what he had repeatedly been directed not to do by the Circuit Court in Thompson. Disingenuous conduct by Megna is precisely what sanctions are designed to deter and/or prohibit. The lower court was entitled to enforce its order(s) and cannot be faulted. Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813. The lower court had a right to preserve order and proper respect for the legal system, as well as to protect those who would be unjustifiably harassed. Sanctions were otherwise proper because misconduct, once tolerated, encourages and breeds even more disrespect for the court's orders. Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 858 P.2d 1054 (Wash. 1993)

Megna has referenced an August 8, 2011 letter (Supp. R. pp. 85-86), as well as an October 10, 2011 letter he sent to the lower court in Thompson representing that he would

not further violate the court's orders. Megna relies on it to show his "good faith". The letters do not support Megna's assertions. The letters further established Megna's lack of candor and lack of any good faith. Megna was warned of his misconduct repeatedly. Megna stated he was aware of his disqualification and would not continue. Then he opted to do what was not allowed and which he said he would not do. In context, the inescapable conclusion is that Megna was willfully flaunting the terms of his disqualification for ulterior, self-serving reasons in July and August, 2011 and on March 19, 2012 (in his "Synopsis") in Thompson, in February and March, 2012 in Anasti – and in each case as a subterfuge and disingenuously for use in the other case and other unrelated cases. Megna was clearly utilizing numerous discovery devices in Anasti in a transparent, duplicitous attempt to avoid the consequences of his disqualification in Thompson, as well as to continue to pester those on opposing sides. He was wrongfully using numerous discovery devices in Thompson to harass the same persons and others in Anasti, as well as using it as a springboard to gather information relative to both cases where he was not permitted to act, as well as for use in case(s) in Florence county that had no relationship to either Anasti or Thompson. Lee in particular had no interest in any of the cases at that juncture.

Such conduct by Megna is most troubling when it is considered in conjunction with Megna's March 11, 2011 response in Thompson to the motion to have him disqualified (R. pp. 740-745) and the orders in Anasti dated April 3, 2008 (R. pp. 15-19 at 19) and April 1, 2009.

It is sufficient to say that the lower court had before it overwhelming evidence of Megna's duplicity, in addition to his multiple and repeated violations of SCRCP and the court's orders.

Finally, the legal authority cited by Megna is inapposite. This is so because the issue to be addressed is not whether a right to appeal was preserved by virtue of the filing of a Rule 59(e) motion to reconsider disqualification, but instead the question is whether Megna was entitled to thereafter willfully and repeatedly ignore the court's order disqualifying him until or unless the order was set aside. The answer to that question is well settled and obvious. It is further set forth in Ms. Ballard's Brief. The order has not been set aside, stayed or reversed. Megna was required to obey the court's order. He inexcusably and unapologetically did not do so.

ADDRESSING APPELLANT'S ARGUMENT 2:

Whether the lower court erred in finding and concluding that Respondent Anasti's March 9, 2012 motion to quash was not previously decided by the Court of Appeals.

Megna has continuously asserted that the March 9, 2012 motion filed in Anasti and heard by Judge Baxley on May 15, 2012 had been previously addressed and resolved in Megna's favor by the Court of Appeals. Megna's assertion is not true. Stronger words, while appropriate, are not necessary. Suffice it to say that Megna's argument is readily disproved by even the most cursory inspection of the Court of Appeals order in Anasti dismissing the appeal as untimely:

1. The Court of Appeals rendered its decision on **April 1, 2011**. The case was dismissed for lack of jurisdiction. The Court of Appeals did not and could not address the **March 9, 2012** motion, which sought protection from discovery abuses by Megna occurring in February and March, 2012. The issue addressed in the March 9, 2012 motion was never before the Court of Appeals. The

motion was never before the State Supreme Court either – Megna's petition for writ of certiorari had been denied and the case remitted on October 7, 2011.

2. No motion for protection from Megna's affirmative discovery abuses in Anasti had ever before been addressed in the Court of Appeals. The appeal was dismissed in April, 2011, on the jurisdictional basis of untimeliness. The merits were not addressed. Megna's repeated claims to the contrary are simply once again untrue. Moreover, Megna's argument is internally inconsistent. This is so because -- **if** Megna's contentions had ever been deemed meritorious, i.e. that the issues (including damages and Rule 11 sanctions) were addressed on the merits and that Lee "won", there would have been no reason for him to attempt to engage in discovery in Anasti. In addition, Megna clearly would not have needed (or been entitled to) discovery under the auspices of Anasti, relating to some alleged nefarious conspiracy against him personally by attorneys in Thompson, or a judge and his family and others in Florence addressed *infra*, and various attorneys in cases in Florence in which he was involved as a party(s). Likewise he would not have had any need for discovery relative to an unrelated federal case with Mr. Woodington that he previously lost... not relating to either Anasti or Thompson.

3. The Court of Appeals did not rule on the outstanding November 7, 2007 Rule 11 sanctions motion. Furthermore, and despite Megna's averments to the contrary the November 7, 2007 motion for sanctions was not before Judge Baxley. Judge Baxley made that abundantly clear in his order. (R. pp. 90-102 and especially number 4 at p. 92) Again, it is emphasized that the Anasti appeal

was previously dismissed in that it was jurisdictionally defective – due to Megna's inattention to detail. His multiple attempts to assert arguments that are untrue is likely a factor as to why he was facing two criminal sanctions hearings, issued by the court *sua sponte*. Motions for discovery were not before the Court of Appeals, and thus were not addressed either. The merits of the case were never addressed. The November 7, 2007 motion was not addressed by the Court of Appeals. No substantive issue was addressed. Damages issues were not addressed by the Court of Appeals. The case was remitted for the resolution of outstanding issues – which consisted of **damages** against Wilson and Goodwin alone and Rule 11 **sanctions** against Megna alone. Upon a **damages** hearing date being set and upon notice that Wilson and Goodwin's attorney being in a coma, Megna then engaged in the conduct that was the subject of the motion for sanctions dated March 9, 2012.

4. At the time of dismissal of Megna/Lee's appeal in Anasti in April, 2011, Respondent did, out of an abundance of caution, move for Rule 269, SCACR sanctions, limited to Megna's misconduct during the period of the appeal only. By that time, Respondent had already made abundantly clear his contention that the court had no jurisdiction over an untimely appeal. That is self-evident in Respondent's brief – it is devoted to the issue of jurisdiction. This court obviously agreed that it had no jurisdiction over Lee's appeal, precisely because it had been untimely filed by Megna. More to the point, Rule 11 sanctions were not addressed by the Court of Appeals because that issue was not before it. Besides, the basis for Rule 11 frivolous proceedings sanctions is to be

distinguished from discovery abuses and other separate and distinct sanctions, as well as those sanctions available under Rule 269. Since there was no jurisdiction over the appeal, the Court of Appeals presumably would not have addressed an issue that was not properly before it. Thus, even if Megna's argument otherwise had any merit relative to Rule 269, it would not have been dispositive of the separate and distinct November 7, 2007 Rule 11 sanctions motion, nor would it have had any relationship to the subject of the court's May 15, 2012 hearing. Disposition of a Rule 269 motion in 2011 is distinguished from the initial Rule 11 SCRCP motion for sanctions, and it too is was distinguished from the March 9, 2012 motion for sanctions.

The fallacy of Megna's argument is otherwise comprehensively addressed in Anasti's memorandum in reply to Megna's Synopsis for the May 15, 2012 hearing (R. pp. 509-817) and by Ms. Ballard. To avoid redundancy, the terms of Anasti's reply memorandum and Ms. Ballard' brief are applicable to all issues raised by Megna. They are adopted and incorporated herein by reference.

ADDRESSING APPELLANT'S ARGUMENT 3:

Whether the March 9, 2012 motion to quash before Judge Baxley on May 15, 2012 was the same as the motion for sanctions (against Appellant) filed November 7, 2007.

As a preliminary, threshold matter, Megna has not timely or properly preserved the issue he raises. Respondent's response to Megna's first and second arguments, *supra,* are adopted and incorporated herein.

However, *arguendo*, Megna has once again misstated and misapplied what actually occurred. His factual claims and alleged sequence of events are belied by the record and this court may take judicial notice of proceedings previously before it, as well as their disposition. No law cited by Megna is applicable. What Megna asserts is specious. A simple reference to the pleadings disproves Megna's assertions:

After Megna's appeal in Anasti was concluded, the case was remitted. There was at that point, left for resolution;

- A damages hearing (not involving Megna or Lee), and
- A November 7, 2007 Rule 11 sanctions hearing involving Megna alone. The November 7, 2007 motion was amended to delete Lee from consideration, given her bankruptcy. The motion was in fact timely, however it was expressly not before Judge Baxley.

Judge Baxley did not hear either the damages hearing, or the November 7, 2007 motion for sanctions. That is made clear in his orders. (R. p. 92 finding 4)[20] The issues before Judge Baxley essentially related to Megna's repeated disobedience of court orders disqualifying Megna in Thompson and in conjunction with his misuse of SCRCP in February and March, 2012 in Anasti, especially under the guise of representing Lee and/or alternatively Wilson and Goodwin. Through what can only be characterized as duplicitous, overtly disingenuous legal machinations, Megna has been successful in delaying resolution – of the November 7, 2007 sanctions order now since January, 2008 by virtue of Lee's/Megna's appeals, Lee's various bankruptcy filings and Megna's multiple

[20] In fact, Wilson and Goodwin subsequently had a hearing and then confessed judgment as to damages.(Supp. R. pp. 9-19)

motions and appeals in both Federal and State courts and his other misconduct that is elsewhere detailed. As it relates to the subject of the November 7, 2007 motion, it is alleged to have commenced in Anasti by at least the time of the filing of a "flim-flam" defense by Megna to the complaint and has continued almost unabated. That said, the issue before Judge Baxley and hence the within appeal was limited to consideration of the March 9, 2012 motion in Anasti, in conjunction with Ms. Ballard's motion in Thompson. The other matters and his other conduct that have been exposed have corroborated that Megna was continuing to abuse the legal system. Otherwise, they are not relevant to the disposition of the distinct issues now before the court.

Finally, though perhaps redundant, it is to be stressed that (a) the sanctions matter before Judge Baxley in Anasti was entirely distinct from the other sanctions motion(s) against Megna; (b) the veracity of Megna's claims are belied by his own "Synopsis". He claimed he was engaging in discovery as to "damages"; and on behalf of Wilson and Goodwin; a matter in which he had on January 18, 2012 and subsequently expressly stated neither he nor Lee had any interest (R. p. 246, line 21-p. 247, line 2; p. 248, lines 15-17; p. 251, lines 6-11; p. 252, lines 9-21); and (c) Megna argues inconsistently that he must engage in discovery relative to issue he claims the Court of Appeals had previously decided. Megna is estopped to argue positions and justifications to act that are diametrically the opposite from what he previously has represented to the courts.

ADDRESSING APPELLANT'S ARGUMENT 4:

Whether Appellant was entitled to misuse the discovery process in violation of the terms of his disqualification, with no client, in violation of the bankruptcy court's orders and with no authority.

As a threshold matter, Megna has once again not properly preserved the issue. Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) and on the grounds set forth by Ms. Ballard in her brief. The issue was not raised at the time of the argument on May 15, 2012. Thus, Megna's argument should be disregarded.

Aside from the fact that Megna has now attempted to reengineer yet another specious, alternative excuse for his misconduct, the facts demonstrate once again that any and all of the justifications proffered by Megna's are without merit. Megna previously attempted to justify his misconduct by arguing that he needed to engage in discovery as to **damages** – a matter in which he repeatedly conceded neither he nor Lee has any interest. In his Synopsis, Megna's justification was then that he was seeking discovery on behalf of Wilson and Goodwin, *to wit*: as to damages. They are the parties who were the recipients of a $216,000 award against Lee in the "companion case". It is not coincidental that Megna's representation of Lee had that result. The absolute fallacy in Megna's argument is exhaustingly exposed in Anasti's reply memorandum to Megna's Synopsis. Otherwise, Megna argued in his Synopsis that

> "the state Court of Appeals actually denied Mr. Anasti's request for damages";

and

"the Court of Appeals denied Plaintiff's Rule 11 motion for sanctions".

These representations by Megna are not true. Stronger words, while appropriate are not needed. A simple referenced to the Court of Appeals' decision to dismiss the appeal should be sufficient. However, and despite being untrue, Megna's contentions make the point that if Megna were correct, he would have had no reason to seek discovery. Hence, it would have, *pro tanto*, been frivolous and an harassment to seek discovery in a case which had already been resolved by the Court of Appeals. Megna's representations are also to be juxtaposed against Megna's repeated, but equally untrue and disingenuous, assertions to the Bankruptcy Court and others that;

"the timeliness order of the state trial court [Judge Manning] has been reversed by the state COA". (R. pp. 718-722)

Finally, Megna made clear in his submissions to Judge Baxley that he was seeking discovery as to damages. (Supp. R. pp 87-88, as well as R. pp. 819-820) Damages were not being sought against Lee nor Megna. Damages were at the relevant times being sought solely against Wilson and Goodwin. Neither Lee nor Megna were involved in that aspect of Anasti. The specious nature of Megna's argument is further exposed by the fact that Thompson would have absolutely nothing to do with real estate related damages in Anasti.

If Megna were to theorize that he needed discovery as to sanctions, rather than damages as he claimed, and aside from not timely preserving the issue, there were conventional means to seek it. And, he should have told the truth, rather than to continually assert specious reasons to want it. Megna did not avail himself of those opportunities to be truthful, aside from the fact that he had virtually everything needed over six years of

litigation (nine years once the "companion case" is factored in). Megna had no legitimate basis to act as he did. His excuses are disingenuous. The means he resorted to were not only in non-compliance with the law, but were time-consuming to combat. The lower court had ample evidence supporting its findings and conclusions.

ADDRESSING APPELLANT'S ARGUMENT 5:

Whether sanctions may be issued by a court under appropriate circumstances.

Megna did not preserve this issue. Having not been properly preserved, it is to be rejected. Patterson v. Reid, *supra*.

This is an issue directed at Ms. Ballard and is best addressed by her. However, in support of her right, Respondent would show that Megna sought confidential communications between an attorney and his/her clients, as well as attorney work product. Megna grossly misused SCRCP. His actions were essentially part of a long standing, unjustified personal attack against Respondent, Ms. Ballard and others. Respondent and Ms. Ballard properly and successfully resisted those unjustified and mean spirited attacks by Megna. His attacks were transparently motivated because they had opposed him. He has done the same thing to other attorneys in other cases. Sanctions were appropriate. Megna's phrasing of the issue as fee shifting is not well founded. He confuses sanctions and legal fees. To the degree further explanation is needed, Respondent in Anasti adopts and incorporates the arguments set forth by Ms. Ballard in her brief on this issue and refers to Judge Baxley's orders. Megna's conduct was sanctionable and the court was within in its right and discretion to issue its order. Ex Parte Bon Secours-St. Francis Xavier Hospital, Inc., In Re Wieters, 393 S.C. 590, 713 S.E.2d 624 (2011). There was ample evidence to support the court's findings and conclusions as sanctions.

ADDRESSING APPELLANT'S ARGUMENT 6:

Did evidence exist reflecting that Appellant Megna misused the "discovery process"?

As a threshold matter, Megna did not properly or timely preserve this argument. It should be determined to be waived. Patterson v. Reid, *supra*. Also in accord, Respondent in Anasti adopts and incorporates herein by reference the arguments set forth by Ms. Ballard in her brief.

Addressing the substance of Megna's argument, *arguendo*, it is readily ascertainable from an inspection of his discovery submissions that (a) Megna did not comply with SCRCP in his various discovery devices; he was in gross non-compliance, while at the same time expressing feigned courtesy and (b) Megna improperly utilized discovery devices in Anasti as a platform for ulterior purposes in Thompson (and other, unrelated cases) and improperly used discovery devices in Thompson as a platform for ulterior purposes in Anasti (and other, unrelated cases). This is obviously so in that Megna's subpoenas in Anasti sought Medicare and Medicaid information relative to Thompson, as well as communications involving PDHC, Mr. James, Mr. Josey, Ms. Ballard, etc. How and why attorneys Savage, Stratton, Woodington and Richland County Magistrate Judge Streater were related to Megna's subpoenas issued in Thompson has never been explained by Megna. This undeniable circumstance along with others supports the conclusion that Megna was improperly seeking discovery by misusing Thompson in which he had been disqualified, but in reality it was related to irrelevant issues in Anasti and *vice versa* in Thompson. In Megna's subpoenas to Ms. Ballard and others under the guise of Thompson, and while clearly disqualified, he sought information relative to

Respondent and his client and many other attorneys who had nothing to do with Thompson or Anasti. He also sought to depose Respondent's paralegal.[21] Ms. Ballard was not involved in Thompson, other than to merely confirm on the Darlington Clerk of Court's website that Megna was disqualified. The undersigned Respondent was not involved in Thompson. Neither was his client. Anasti and Thompson were separate and distinct, as Megna conceded in his "Synopsis". Megna has misused discovery under the auspices of Anasti for Thompson and/or for some other ulterior purpose involving some type of worker's compensation action which has never involved Anasti nor Respondent. Anasti had absolutely nothing to do with such issues; Anasti was a property case. It had nothing to do with workers' compensation, Medicare or the issues in Thompson. The inescapable conclusion was that Megna was misusing the legal process in each case separately and in conjunction with one another. The facts supported such a conclusion. And, even if the accusations Megna attempts to level at Ms. Ballard, Mr. James and Mr. Josey, in Thompson (and against judges, their families, physicians and attorneys in cases in Florence as he has alleged) ever had any merit, they had nothing to do with Megna's discovery misconduct in Anasti that was alleged in the March 9, 2012 motion that was before Judge Baxley. Ms. Ballard consulted with Plaintiff/Respondent's attorney in Anasti as to his ethical obligations to report Megna's misconduct *vis a viz* the findings set forth in the lower court's orders of April 3, 2008 and April 1, 2009, as well as to seek advice as to what could be done to force Megna to make a proper record on appeal... precisely so that, *inter alia*, the appeal Megna had commenced on January 4, 2008 could be concluded. That did not relate to the matters before Judge Baxley. Moreover, in Megna's Synopsis, he has asserted that

[21] She had produced conclusive proof disproving Megna's claims relative to timeliness (heard by Judge Manning). That fact has had nothing to do with damages, the prior Rule 11 motion, nor Thompson.

"Ms. Ballard inserted herself in the Richland (Anasti) case, consulted with Mr. Truslow....". Thus, if Megna had ever had any colorable basis for discovery from Ms. Ballard, it would have been to seek it from her in Anasti, not under the auspices of Thompson, long after he had been disqualified. In short, the lower court had before it compelling evidence supporting the findings and conclusions it made in both Anasti and Thompson. The court's order relative to Megna's misconduct in this instance should not be disturbed.

Megna's inattention to important legal detail in these instances has not been isolated. Megna's misconduct has been pervasive and shocking, aside from his *ad hominem* and unjust personal attacks on numerous attorneys who have opposed him. Megna has an established pattern of non-compliance with his legal obligations. He has an established pattern of acting unethically. His harassment and gross misconduct under the auspices of "discovery" in these two instances are but another example.[22]

Finally, Megna's unapologetic last gasp justification for his repeated misconduct was that he needed written communication of numerous attorneys in order to "determine the conflict of Josey...". Megna's argument has at a minimum the appearance of being not only irrelevant, but contrived: First, Megna's assertion has nothing to do with Anasti; it is a red herring designed to distract from the core issue. Second, Mr. Josey's representation related to Thompson, not Anasti. Megna admitted it in his August 10, 2011 reply to the State Supreme Court, *to wit*: that he was pursuing discovery in Thompson (despite being disqualified – a circumstance that he conveniently did not disclose to the Supreme Court).

[22] In yet another case involving Megna (Pee Dee, Megna, et al. v. McNair Law Firm, et. al.; case # 2012 - 213052), the appeal from a Florence dismissal of Megna's case was itself dismissed because of repeated inattention to legal requirements and repeated lack of timeliness. (R. pp. 1334-1337)

Third, Megna was disqualified in Thompson. Megna remained disqualified. He had no legal right to determine anything by way of the issuance of unauthorized and grossly inappropriate discovery in Anasti for use in Thompson, especially after his disqualification or while Thompson was on appeal. Besides, Mr. Josey's communications in Thompson would seemingly be covered by work product and attorney-client privilege, as would Respondent's in Anasti. Fourth, Mr. Josey was not counsel in Anasti. Megna has claimed he needed information relative to damages, but neither Mr. Josey, nor Mr. James, nor Ms. Ballard had anything to do with the issue of damages in Anasti. Fifth, Thompson did not relate to Anasti and *vice versa*. The only true, relevant connection between the two cases was that Megna had engaged in misconduct in **both** cases independently and in conjunction with one another. That fact does not give legitimacy to Megna's wholesale attempt to usurp and abuse the discovery process and otherwise violate the lower court's order of disqualification under any scenario. Moreover, there has been no misconduct found on the part of those on opposite sides of cases involving Megna. That has been repeatedly made clear by the courts and never to date disturbed in any of Megna's numerous appeals. Sixth, there has been no "confidential information" ever demonstrated to have been wrongfully disseminated. The fact that attorneys whom Megna chose to harass may have communicated relative to the consequences of Megna having previously been found to have engaged in gross misconduct and untrue representations to the courts or that those attorneys may have been diligent in inquiring about the status or circumstances of Megna's past misconduct is not to be faulted, especially in light of the court's orders of April 3, 2008 and April 1, 2009, the Bankruptcy Court orders, the order of disqualification in Thompson and the loss of Lee's cases at summary judgment and on appeal due to the lack

of professional attention to detail/lack of timeliness. In short, Megna was alternatively or both on an unjustifiable "fishing expedition" and intending to harangue and annoy those with whom he did not see eye to eye on various cases. The conclusion was properly drawn that Megna's conduct was grossly improper in this instance as well. Substantial evidence supporting such a conclusion exists.

ADDRESSING APPELLANT'S ARGUMENT 7:

Whether Megna acted in "good faith"?

This issue has not been property preserved by Megna. Patterson v. Reid, *supra*, and as fully briefed by Ms. Ballard. Moreover, Megna's argument does not appear to be addressed to any legitimate issue in Anasti.

Addressing Megna's contentions, *arguendo*, the essence of Megna's argument is that he was entitled to violate the court's order disqualifying him in Thompson, using Anasti to do so as a part of his unrelenting, disingenuous campaigns to harass and vilify those attorneys who had opposed him in various cases. Megna's lack of good faith and other misconduct is adequately set forth in the record on appeal and as otherwise addressed within the body of the within brief. Simply stated, Megna was disqualified, yet he continued to do and thereafter to do what he was directed not to do. Megna's lack of good faith is also addressed in the memorandum in response to the Synopsis of Megna. (R. pp. 509-817) Megna's argument has overwhelmingly been proven to be meritless. He has continuously acted in bad faith, in conjunction with an incredible inattention for legal detail from the inception. Moreover, in an attempt to avoid the consequences of his untimeliness in appealing in the first instance in Anasti, Megna was repeatedly found to have been deceitful in dealing with the courts. He has not heeded his legal responsibilities.

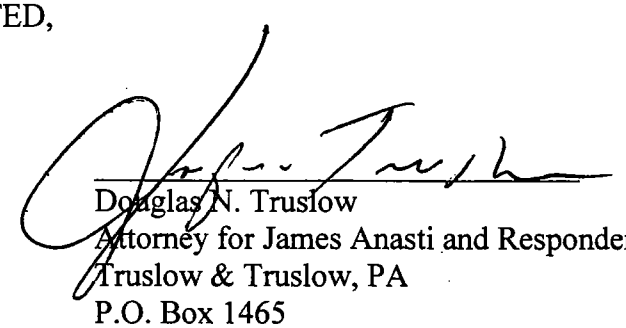
He has done the opposite of what he should have done. Megna's continuing and unapologetic excuses were rejected by the lower court. There has been no "good faith" by Megna. There was substantial, in fact overwhelming, evidence supporting the conclusion reached by the lower court. The decision and resolution should not be disturbed on appeal.

This court has only to review Megna's March 11, 2011 return in Thompson to a Motion to disqualify him (R. pp. 741-743) and the lower court's orders of April 3, 2008 and April 1, 2009 in Anasti to reconfirm that Megna has not ever acted in good faith in either Thompson or Anasti. Megna has a long, documented history of grossly inappropriate *ad hominem* attacks and other misconduct against those who have unfortunately found themselves on opposite cases from Megna. The entire record, including Megna's response to the motion to dismiss his initial appeal in Anasti (as untimely), his various emails referring to opposing counsel as being a "scorpion" and his other pleadings as support for the conclusion that Megna has not conducted himself in "good faith" in either Anasti or in Thompson. Thus, as with his other claims, Megna's argument is likewise meritless and should be rejected.

CONCLUSION

For the reasons set forth herein, Respondent urges this court to affirm the decision of the lower court.

RESPECTFULLY SUBMITTED,



Douglas N. Truslow
Attorney for James Anasti and Respondent herein
Truslow & Truslow, PA
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
douglastruslow@truslowlaw.com

Columbia, South Carolina

May 25, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge
Civil Action: 2007-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Civil Action: 2010-CP-16-0332

Case Number: 2013-001461

Ex Parte: Douglas N. Truslow, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
James Anasti, Plaintiff,

v.

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

And

Ex Parte: Desa Ballard, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
Pee Dee Health Care, P.A., Plaintiff,

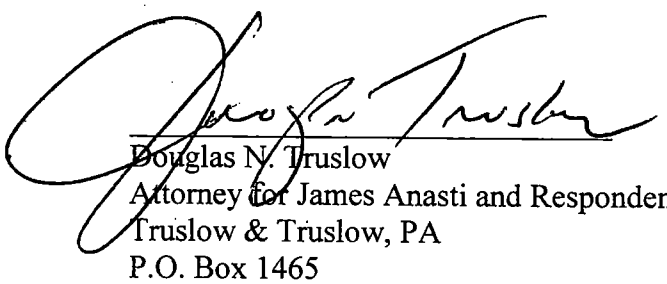
v.

Estate of Hugh S. Thompson, Defendant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 25, 2014



Douglas N. Truslow
Attorney for James Anasti and Respondent herein
Truslow & Truslow, PA
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
douglastruslow@truslowlaw.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 07-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 40-CP-16-0332
Appellant Case No. 2013-001461

Ex Parte: Douglas N.Truslow, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
James Anasti, Plaintiff,

v.

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

And

Ex Parte: Desa Ballard, Respondent,
Ex Parte: Tony R. Megna, Appellant,
In re:
Pee Dee Health Care, P.A., Plaintiff,

v.

Estate of Hugh S. Thompson, Defendant.

APPELLANT'S FINAL REPLY BRIEF

James M. Griffin
Ariail E. King
Lewis, Babcock & Griffin, L.L.P.
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANT

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ARGUMENT

I. The issue of disqualification was preserved and Appellant was not in violation of the disqualification order.

Respondents argue that whether the motion to alter or amend the disqualification affected its finality is not preserved for appeal because it was not raised until Appellant's Motion for Reconsideration.[1] However, Judge Baxley clearly considered this argument (and all others) and ruled upon it, stating "The Court has considered all issued raised by the motions for reconsideration and concluded all to be without merit." Order Denying Motion to Rec., p. 3. Ballard has not cross-appealed that holding. Thus, the argument, having been raised to the trial court and ruled upon has been properly preserved for this appeal: "Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved[.]" Pye v. Estate of Fox, 369 S.C. 555, 566, 633 S.E.2d 505, 510 (2006)

Moreover, Ballard's claim that this argument is not supported by case law is not accurate. In Southeastern Housing Found. v. Smith, 380 S.C. 621, 640, 670 S.E.2d 680, 690 (Ct. App. 2008) the court found that a Rule 59(e) motion removes the finality of the challenged judgment. Ballard tries to distinguish Southeastern, arguing that it held that a Rule 59 motion only stayed the one-year period for seeking relief under Rule 60. However, the opinion in Southeastern did not limit itself to the Rule 60 deadline only. Moreover, despite Ballard's protests, Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct.App.1999) does indicate that an order (in that case

1 Even though this argument only applies to the Thompson/Ballard matter, Truslow has responded in his brief. In fact, both Ballard and Thompson respond to issues pertaining to the other throughout their briefs. Appellant objects to Ballard responding to arguments that are solely directed to the Truslow appeal, and makes the same objection to Truslow's responsive arguments as to Ballard issues. Since the two Respondents filed separate briefs, they should confine themselves to the issues related to his or her specific case; otherwise, the Respondents are getting two bites as the apple.

summary judgment) was not final when a motion for reconsideration was pending , as it correctly held the court can alter the order:

> ...a second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration. In such a case, a new judgment has replaced the previous judgment and the party aggrieved by the alteration may move for reconsideration. *See* 12 James W. Moore et al., *Moore's Federal Practice* ¶ 59.37 at 59-123 (3d ed. 1999) ("When a court alters a judgment, the party aggrieved by the alteration may ask for correction."). If, on the other hand, the trial court denies such a motion, the finality of the judgment is restored and the appeal time begins to run from the date the order is entered. *Id.* ¶ 59.36 at 59-123.

Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (S.C. Ct. App. 1999). Ballard also sets forth a timeline in which the order purportedly became final or unfinal. However, an order is not truly final until a final decision is made by the appellate authority. Cf. 50 C.J.S. § 956 (Judgment in which appeal is pending may lack finality for res judicata purposes). In the Thompson case, the order of disqualification was issued on April 15, 2011. Megna timely filed a Rule 59(e) motion.[2] The lower court did not rule on the motion until August 12, 2011. The subpoena on Ballard (under the Thompson caption) was served on July 30, 2011 – while the motion to alter or amend was pending. Because the disqualification order had been divested of enforceability as a matter of law once the Motion to Alter or Amend was filed, Appellant was not in violation of any court order when he served the subpoena on Ballard.

Truslow, while purporting to address the issue presented by Appellant, seems to argue the Appellant misused the Thompson case to seek discovery in Anasti.[3] However,

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2 Ballard's statement that the motion was filed twelve days later was disingenuous; a motion to alter to amend does not have to be filed until "10 days after receipt of written notice of entry of the order." Appellant filed the Rule 59(e) motion on May 2, 2011 – within the ten days after he received the signed order that was mailed on April 19, 2011. See, Order of Disqualification and Appellant's Motion to Reconsider.

3 Though the issue raised by Appellant involves the effect of the motion to alter or amend the disqualification order, Truslow's response (which really does not relate to his case) goes well outside the

as made clear in Appellant's initial brief, Appellant sought discovery under the Thompson caption, with regard to Ballard's advice or participation with Rene Josey and other attorneys who were directly adverse to Appellant's client in Thompson. As discussed more fully in Appellant's initial brief, Appellant had previously raised the issue of Josey's conflict of interest in the Thompson case. Through Truslow's billing statements filed during the appeal, it was apparent that Truslow had been in conversations with Mr. Josey, and his statements also reflected conferences with Ballard, giving rise to the need to inquire whether Ballard had been involved in conferences with Truslow and/or Josey regarding the Thompson case. Thus, Appellant properly issued discovery on July 30, 2011, to Ballard as to the potential conflicts of interest or disclosure of confidential information.

As to the discovery sought in the Anasti case, the order of disqualification in Thompson has no effect. Moreover, Truslow had a motion for sanctions pending against Appellant, and despite Truslow's claim, there is no statute or rule requiring Appellant to file a motion before being allowed to conduct discovery (and Truslow cites no such authority).

II. Any conduct previously rejected by this Court as grounds for sanctions cannot form the basis for the lower court's award of sanctions.

Both Truslow and Ballard misconstrue Appellant's argument with regard to this Court's prior dismissal of a sanctions claim. Appellant merely argues that conduct which was previously rejected by this Court cannot be the basis for the lower's court's order. If this Court has determined it was not sanctionable, the lower court cannot use it as the basis of sanctions. Moreover, the case upon which Ballard, (to whom this issue does not

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issue and is confusing at best).

apply but responded anyway), relies upon, Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 750 S.E.2d 78 (2013), for the proposition that a circuit court can sanction for appellate misconduct, does not apply. In that case, the appellate court, in its discretion, denied fees, but the circuit court was mandatorily *required* to award of fees to prevailing party under a statute known as the Dealer's Act. There is no such statute here and this is not a matter of awarding fees to a prevailing party.

IIII. Even if the sanctions motion for which Appellant sought discovery has not been heard, he did not misuse the discovery process because it was necessary to contest the sanctions.

Ballard argues that Appellant's use of the discovery process is somehow improper because Truslow's Amended Motion, filed November 21, 2011 has not been heard.[4] However, whether or not that motion has been heard has no effect on whether discovery was needed. Truslow sought damages and sanctions against Appellant of $500,000, and provided no support for this significant amount, although he did indicate that he, Ballard and others would be witnesses.[5] Appellant sought discovery on this large monetary sanction by issuing certain subpoenas to which Truslow not only objected, but then sought sanctions for; in fact, the majority of Truslow's time was not to object or quash to a subpoena but in pursuit of sanctions. (SR. 41-43).

As a matter of due process, Appellant must be afforded an adequate opportunity to contest the sanctions. *See, e.g.*, In re Kunstler, 914 F.2d 505, 522 (4th Cir. 1990)("We find that appellants were not given an adequate opportunity to respond to the type and

4 Truslow argues that the Amended Motion of November 21, 2011 relates back to a 2007 motion, and is not the motion decided before the circuit court on May 15, 2012. While Truslow is correct and the 2007/2011 motions were not before Judge Baxley (R. 333-335), the 2011 did increase the amount of sanctions sought from $183,000 to $500,000 with no support.

5 The subpoena served on Ballard in the Thompson case was related to a conflict of interest of the defense counsel, as more fully discussed in Section V, *infra.*

amount of sanction imposed, ***particularly in light of the large monetary sanction.***") (emphasis added). It appears that Appellant is being punished for exercising his due process rights to contest the sanctions sought by the Amended Motion.

Truslow claims that Appellant's need for discovery as to "damages" cannot justify his actions. Truslow's main objection seems to be the use of the word "damages" and he argues that Appellant had no interest in the damages hearing against Wilson and Goodwin (in the *Anasti* case). However, the Amended Motion for sanctions, directed solely to Appellant,6 stated that "**[d]amages and sanctions** are expected to exceed $500,000." Truslow November 21, 2011 Am. Motion, p. 1 (emphasis added). Thus, to the extent Appellant has referenced "damages" in connection with the discovery sought, he is merely parroting the words found in Truslow's own motion, which appeared to seek both damages and sanctions from Appellant only. The only method by which Appellant could contest the "damages and sanctions" sought was through discovery.

IV. The monies awarded to Ballard by the lower court are merely attorney's fees awarded to a pro se attorney in the disguise of sanctions.

Rule 11, SCRCP, sets forth available sanctions:

> Sanctions imposed on a party, a party's attorney or both for filing a pleading, motion, or other paper to cause delay or when no good grounds exist to support the filing may include: an order to pay the reasonable costs and attorneys' fees incurred by the party defending against the action brought in bad faith; a reasonable fine to be paid to the court; a reasonable monetary penalty to the party defending the action brought in bad faith; or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future action in bad faith.

Thus, while attorney's fees are a proper measure of sanctions where they are actually incurred, South Carolina case law is clear that attorney's fees cannot be awarded to pro se

6 While Truslow also claims that Appellant was acting without his client's knowledge, she was provided copies of the discovery served on Truslow. (R. 1303-1333).

litigants: Attorneys' fees have also been denied to *pro se* attorney/litigants for the policy reason that it would simply be unfair to allow *pro se* attorneys to recover fees, while denying such fees to *pro se* laymen. Hopkins v. Hopkins 343 S.C. 301, 540 S.E.2d 454 (2000).

Ballard[7] argues that her fees are an appropriate measure for sanctions, relying on Ex parte Bon Secours-St. Francis Xavier Hosp., Inc., 393 S.C. 590, 600, 713 S.E.2d 624, 629 (2011). However, the case merely reflected the language of Rule 11 and stated

> The award to the other party of its detailed, itemized costs and fees incurred as a result of the improper removal plainly is allowed under the express language of Rule 11, SCRCP.

Ex parte Bon Secours-St. Francis Xavier Hosp., Inc., 393 S.C. 590, 600, 713 S.E.2d 624, 629 (2011). The attorney's fees awarded in that case were not awarded to a *pro se* party/attorney,[8] and furthermore, were not even the subject of the appeal as that part of the sanctions order had been resolved. See, Bon Secours, Footnote 7. The court found that the unappealed sanctions, awarding attorney's fees to the prevailing party's attorney was permitted by Rule 11, but that the judge has abused his discretion in going beyond "the conventional costs and fees." Id.

Here, the lower court, by its own admission clearly reimbursed Ballard for attorney's fees by acknowledging that the amount awarded:

> constitutes reimbursement for time and expenses set forth in Ms. Ballard's amended affidavit dated August 8, 2012. These sanctions are not punitive but are compensatory....

(R. 86). In other words, the lower court awarded attorney's fees to a pro se litigant, which is error.

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7 As set forth previously, Appellant objects to Truslow's response to a Ballard issue.
8 Ballard acknowledged that she was appearing pro se. (SR. 40).

V. Appellant acted in good faith and with a valid purpose in issuing a subpoena to Ballard, who agreed to represent Appellant and Pee Dee, while at the same time consulting with attorneys who were directly adverse to Appellant and Pee Dee.

Ballard attempts to distance herself from the relationship created with Appellant. However, it is undisputed that Appellant did contact Ballard's office by email on October 12, 2010. Furthermore, it is clear that Appellant or her partner reviewed the confidential material provided[9] and agreed to provide representation: "But if you would like us to send a fee agreement, we will be happy to participate in the case." (R. 1165).[10] Thus, Ballard or her partner agreed to represent Appellant and his client, Pee Dee Health Care.[11] At the same time, however, Ballard was providing representation to Truslow in a matter adverse to Appellant.

Neither Ballard nor her partner revealed that Ballard was involved in the Anasti litigation since 2008 (R. 639-694), including advising Truslow on sanctions against Appellant. Moreover, Truslow's Motion for Sanctions in the Anasti appeal on May 9, 2011, indicated that he had repeated conferences with Ballard, as well as conferences with other attorneys in the Thompson litigation that was directly adverse to Appellant and Pee Dee. At the time that Appellant issued the subpoena to Ballard, he was in a dispute with attorney Rene Josey, who was serving as counsel to the defendant in Thompson, over whether Josey had a conflict of interest. The discovery that Ballard had been

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9 Respondents claim that the material Appellant sent to Ballard was not provided to trial court but it appears that the entire file regarding the Lake City litigation that is the subject of the email was provided to the court. (R. 267:19-268:2)

10 Contrary to Ballard's claims that she or her office quoted a fee to cause people to be less than interested in retaining her services and that didn't "want anything to do with a case that Mr. Megna was involved in," (R. 290:17-291:3) Ballard neither quoted a fee nor turned Appellant down. Instead, the email indicates her acceptance of representation.

11 The fact that Ballard stated the amount she would charge would probably be more than Appellant's client could pay indicates that she had reviewed the matter and knew that the fees would be costly. Ballard now claims, despite the indication of the email, that no one in her office reviewed the documents and she never intended to take the case.

advising Truslow, who in turn had been conferring with Josey and others in the Thompson case raises a legitimate concern that Ballard may have provided advice as to that litigation as well. Appellant had a good faith basis to investigate the substance of those conversations through the subpoena to Ballard, and the subpoena was not a sham or attempt to pursue discovery in Anasti.

The evidence (email) indicates that Ballard or her partner received and reviewed confidential information about Pee Dee while at the same time she was engaged in advising Truslow about litigation directly adverse to Appellant. Even if Ballard herself did not agree to represent Appellant, her partner did, and under the rule of imputed disqualification, neither Ballard nor her partner could represent Appellant while at the same time representing a party adverse to Appellant. See, Rules of Professional Conduct, Rule 1.10 ("While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9. ..." and Comment to Rule 1.7 ("Concurrent conflicts can arise from a lawyer's responsibilities to another client, a former client or third person or from the lawyer's own interests.").

VI. Ballard's additional sustaining ground provides no support for the lower award of sanctions.

Ballard claims, as an additional sustaining ground, that the subpoena served by Appellant did not comply with Rule 45, SCRCP and that Appellant failed to contradict that at the trial court level.[12] However, Appellant argued, without conceding, that even if there was a Rule 45 procedural violation, Ballard submitted an objection to the subpoena which she was all she was required to do. (SR. 35-47). The objection cost her

12 The circuit court's order awarding sanctions makes no mention of Rule 45, SCRCP.

approximately $800 in time to prepare.13 Id. Appellant did not pursue the matter by filing a motion to compel. Id. The remainder of the sanctions sought by Ballard was for time and expenses in pursuing the sanctions. Id. The fact that there may have been a technical violation under Rule 45, SCRCP does not sustain the lower court's award of an award of sanctions of over $15,000.

CONCLUSION

As set forth herein, the lower court's order was not supported by the facts and was based on errors of law. Thus, it is respectfully submitted that the lower court abused its discretion in awarding sanctions and the orders must be reversed.

James M. Griffin
Ariail E. King
Lewis, Babcock & Griffin, L.L.P.
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANT

Columbia, South Carolina
March 25, 2013

13 Of course, as already argued, Ballard is not entitled to even that $800 as she is a pro se litigant, and as such is not entitled to attorney's fees. See *Hopkins v. Hopkins, supra.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY AND DARLINGTON COUNTY
Circuit Court

J. Michael Baxley, Circuit Court Judge
Case No. 2007-CP-40-0576
J. Michael Baxley, Circuit Court Judge
Case No. 2010-CP-16-0332
Appellant Case No. 2013-001461

Ex Parte: Douglas N.Truslow, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

James Anasti, Plaintiff,

v.

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

AND

Ex Parte: Desa Ballard, Respondent,

Ex Parte: Tony R. Megna, Appellant,

In re:

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

v.

Estate of Hugh S. Thompson, Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Reply Brief of Appellant complies with Rule 211(b) SCACR and with the August 13, 2007 Order of the South Carolina Supreme Court.

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

Columbia, South Carolina
March 25, 2014

THE STATE OF SOUTH CAROLINA
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Ex Parte: Tony R. Megna, Appellant,
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PROOF OR SERVICE

I, Jaime Harmon, the undersigned employee of Lewis Babcock & Griffin L.L.P, attorney for Tony Megna, do hereby certify that I have served a copy of Appellant's Final Reply Brief on

March 25, 2014, by causing a copy of same to be deposited in the U.S. Mail, proper postage prepaid addressed as follows:

Douglas Truslow
Truslow & Truslow
P.O. Box 1465
Columbia, SC 29202

Desa Ballard
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, SC 29171

Jaime Harmon

Columbia, South Carolina
March 25, 2014