

78693

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714
shamm@RichardsonPlowden.com
Direct: 803-576-3713

February 12, 2016

RECEIVED

FEB 12 2016

SC Court of Appeals

VIA HAND DELIVERY

Attn: Tonisha
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Protection and Advocacy for the People with Disabilities, Inc., et al., v. South Carolina Department of Disabilities and Special Needs, et al.
Appellate Case No.: 2014-000244
Civil Action No.: 2007-CP-40-02187
RPR File No.: 6151.001

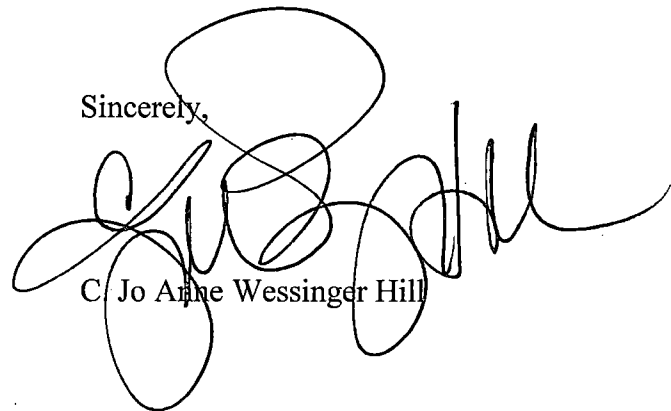
Dear Tonisha:

Please allow this correspondence to serve as our written request for a recording of the oral arguments heard by the Court on January 7, 2016, in the above referenced matter. This correspondence also includes the required fee of \$20.00 in the form of our firm check made payable to the South Carolina Court of Appeals.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,



C Jo Anne Wessinger Hill

CJWH/smh
Enclosure

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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FEB 12 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2014-000244

Protection and Advocacy for the People with Disabilities, Inc.; M.J.B. on behalf of and as next friend of J.B.; C.B.B. on behalf of and as guardian of P.B.; G.C. and L.C. on behalf of and as guardians of F.C.; D.P. on behalf of and as guardian of C.M.D.; K.F. and S.F. on behalf of and as next friend of A.E.; J.H. on behalf of and as next friend of A.J.; G.M. on behalf of and as next friend of E.M.; N.M. on behalf of and as guardian of E.J.M.; R.P. on behalf of and as Guardian of S.P.; R.R. and J.R. on behalf of and as guardians of K.D.R.; and J.K. on behalf of and guardian of S.S. **APPELLANTS**

v.

South Carolina Department of Disabilities and Special Needs; Dr. Beverly Buscemi, in her official capacity as Director of the South Carolina Department of Disabilities and Special Needs; and Nancy Banor, Deborah McPherson, Christine Sharp, Rick Huntress, Fred Lynn, Harvey Shiver and Kelly Hanson Floyd, as Commissioners of the South Carolina Department of Disabilities and Special Needs **RESPONDENTS**

PROOF OF SERVICE

I, the undersigned attorney with the firm of Richardson Plowden and Robinson, P. A., attorneys for the Plaintiffs, do hereby certify that I have served upon the following the foregoing Appellant's letter, dated February 12, 2016, as indicated below on February 12, 2016:

VIA EMAIL AND U.S. MAIL
William H. Davidson, II, Esquire
Kenneth P. Woodington, Esquire

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202



C. Jo Anne Wessinger Hill

February 12, 2016
Columbia, South Carolina

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FEB 12 2016

February 12, 2016 SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: *Protection and Advocacy for the People with Disabilities, Inc., et. al., Appellants*
v. South Carolina Department of Disabilities and Special Needs, et. al.,
Respondents
Appeal from Richland County Court of Common Pleas
Case No. 2007-CP-40-02187
Appellate Case No. 2014-000244
Our File No.: 006151.001

Dear Ms. Kitchings:

In accordance with Rule 208(b)(7), SCACR, the Appellants are writing in response and objection to the letter dated February 2, 2016 from the Respondents. First, the Respondents' letter does not comply with the Rule 208(b)(7), SCACR. There is no argument about a Medicaid Waiver or Pervasive Disability Disorder in the initial or final briefs of the Appellants or Respondent; and therefore the Respondents' letter fails to comply with the requirements of Rule 208(b)(7), SCACR. Rule 208(b)(7), SCACR, states:

[w]hen pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

The Respondents filed their Final Respondents Brief on October 8, 2014. Oral argument was heard on January 7, 2016. The Respondents had the opportunity to address any matter related to *Stogsdill v. Department of Health and Human Services*, Opinion No. 5271, filed on September 10, 2014, 410 S.C. 273, 763 S.E.2d 638 (Ct. App. 2014), prior to and during oral argument on January 7, 2016. In fact, Appellants notes reflect that the Respondent did address and make

reference to same at that time. The time for the Respondents to address or reference the *Stogsdill* decision has already passed and whatever was not addressed has been waived by the Respondents.

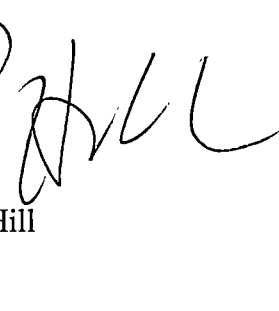
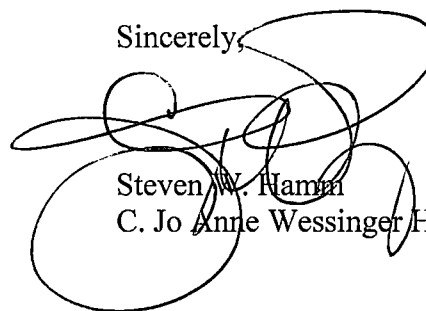
Second, Opinion No. 27601 by the South Carolina Supreme Court, filed on January 20, 2016, only said that it was not going to make a decision or otherwise address the prior opinion in the matter of *Stogsdill v. Department of Health and Human Services*, Opinion No. 5271, filed on September 10, 2014 at this time. It did not make any statement otherwise than dismissing the writ. In other words, the law is the same as it was in the case at hand when oral argument was heard on January 7, 2016.

Third, the case at hand is distinguishable from the *Stogsdill v. Department of Health and Human Services*, 410 S.C. 273, 763 S.E.2d 638 (Ct. App. 2014), is a much narrower ruling related to specific services whereas the case at hand is a question of whether a state agency directed to comply the South Carolina Administrative Procedures Act to promulgate regulations can act in complete disregard and in violation of due process, notification and opportunity to be heard by refusing or failing to comply with its statutory duties and responsibilities to promulgate regulations. It is ironic that the issue of Medicaid Waiver in the *Stogsdill* case did have promulgated regulations through Administrative Procedures Act.

The Court's consideration of the matters above is appreciated and we will provide additional information as needed or requested by the Court.

With kindest regards, I am

Sincerely,



Steven W. Haman
C. Jo Anne Wessinger Hill

SWH/tbj

cc: Kenneth P. Woodington, Esq., by US Mail and email
Will Davidson, Esq. by US Mail and email