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Case # \_\_\_\_\_

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM ANDERSON COUNTY, SOUTH CAROLINA  
COURT OF COMMON PLEAS

HON R. SCOTT SPROUSE, CIRCUIT JUDGE

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Case # 2014-CP-04-01780

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NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA  
DEPARTMENT OF LABOR, LICENSING AND REGULATION –  
BOARD OF NURSING

Respondent

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**RECEIVED** NOTICE OF APPEAL

MAR 14 2016

SC Court of Appeals

Nancy C. Perez appeals the Judgment of the Honorable R. Scott Sprouse dated August 10<sup>th</sup>, 2015<sup>1</sup>. Appellant received notice of entry of this Order on August 14<sup>th</sup>, 2015. A copy of the March 8<sup>th</sup>, 2016 Order disposing of Ms. Perez Rule 59 (e) Motion is also attached hereto<sup>2</sup>.

## **I**

### **RELATED APPELLATE CASES 2015-001784 AND 2015-00237**

- 1- On August 20<sup>th</sup>, 2015 Ms. Perez filed the original notice of appeal. Simultaneously, she also filed a motion to abate the appeal in order to allow the trial court time to rule upon a timely filed post trial motion.
- 2- On each of the referenced cases The Court of Appeals remanded the case to the trial court in order for the same to rule on Ms. Perez' Rule 59 (e) motion. The Court of Appeals dismissed the Appeals without prejudice. There is no appellate fee for the subsequent Notice of Appeal<sup>3</sup>.

## **II**

### **THE DENIAL OF TRIAL BY JURY IS IMMEDIATELY APPEALABLE**

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<sup>1</sup> Attachment 1, A true and correct copy of the Judgment being challenged on Appeal is attached hereto as required by Rule 203(a)(B)(ii), SCACR

<sup>2</sup> Attachment 2 , A true and correct copy of the Order denying Ms Perez' Rule 59(e) Motion is attached hereto as required by Rule 203(b)(1), SCACR

<sup>3</sup> A second filing fee will not be collected from a party who previously appealed, Holmes v. East Cooper Community Hospital, Inc., 758 S.E.2d 483, 408 S.C. 138 (S.C. 03/26/2014) citing Hudson v. Hudson, 290 SC 215, 215 , 349 SE 2d 341, (1986)

3- Furthermore, during the trial court proceedings Ms. Perez requested a Jury Trial<sup>4</sup>. The denial of the Constitutional Right to a jury trial is immediately appealable<sup>5</sup>. Ms Perez' Appellate Brief will show that she submitted a pleading demonstrating that she was entitled to relief within the meaning of SCRCF, 8(a) (2)<sup>6</sup>. The Appellate Brief will also show that she pled therein, inter alia, that the nursing profession existed at common law and that at common law the right to work as a nurse could only be revoked by a circuit court. She will show that the South Carolina Supreme Court has ruled that statutes are not to be construed in derogation of common law rights<sup>7</sup>. She

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<sup>4</sup> First Amended Petition For A Writ Of Mandamus And Declaratory Judgment or, in the alternative, Inverse Condemnation Proceedings, filed September 4<sup>th</sup>, 2014.

<sup>5</sup> Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004) ( As previously noted, the purpose of requiring an immediate appeal is to preserve a party's constitutional rights that would otherwise be lost. See generally S.C. Const. Art. I, § 14; S.C. Code Ann. §14-3-330(2) (1976). Here, Helen's constitutional right to a jury trial was lost despite her best efforts to secure a jury trial. Once the case was tried non-jury, Helen's right to a jury trial had already been forfeited. Under these circumstances, we do not believe the policy behind requiring an immediate appeal would have been furthered had Helen appealed at the conclusion of the non-jury trial. Moreover, once the case was tried non-jury, Helen arguably was required to wait for a written order prior to appealing. See Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.... **When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.**"); Ford v. State Ethics Com'n, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) ("The written order is the trial judge's final order and as such constitutes the final judgment of the court."). Thus, we find Helen preserved her right to a jury trial by timely serving her notice of appeal after the final judgment)

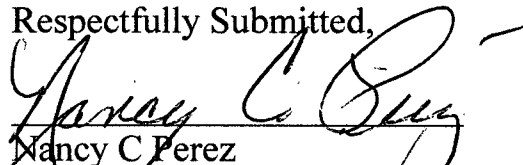
<sup>6</sup> Clark v. Clark, 293 S.C. 415, 361 S.E.2d 328 (S.C. 05/26/1987) citing Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973);

<sup>7</sup> Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395; 745 S.E.2d 110 (SC S. Ct - July 3, 2013 citing Doe v. Marion , 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004) , **aff'd** , 373 S.C. 90, 645 SE 245 (2007)

will also show that the South Carolina Constitution preserves the right of trial by jury in those cases in which parties would have been entitled to it at the time of the adoption of the Constitution<sup>8</sup>.

The trial court did not address the jury trial issue in its Order of Dismissal. So in order to preserve the issue for appeal Ms. Perez was required to submit a Rule 59 (e) Motion<sup>9</sup>.

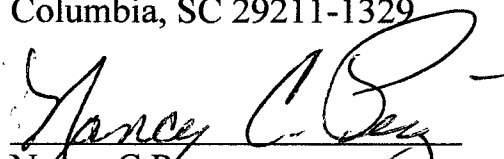
Respectfully Submitted,

  
Nancy C Perez  
713 E. Greenville St – D220  
Anderson, SC 29621  
864-209-1509

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing “Notice Of Appeal” was delivered by mailing a copy thereof on March 10<sup>th</sup>, 2016 court to :

Donnell G. Jennings , Esq  
South Carolina Department of Labor , Licensing  
And Regulation  
PO Box 11329  
Columbia, SC 29211-1329

  
Nancy C Perez

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MAR 14 2016  
SC Court of Appeals

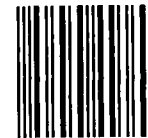
<sup>8</sup> Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004)

<sup>9</sup> Herron v. Century BMW, 395 SC 461, 465, 719 SE 2d 640, 642 (2012); Elam v. S.C. Dep't of Transp., 361 SC 9, 24 , 602 SE 2d 772, 780 (2004)

Nancy C Perez  
713 E. Greenville St - D220  
Anderson, SC 29621



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SC Court of Appeals

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South Carolina Court of Appeals  
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