

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

RECEIVED

JUN 10 2016

SC Court of Appeals

Philip Ethier and Jeanne Ethier,
Appellants,
v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.; Tuomey
Medical Professionals, Inc; and Pee Dee Emergency Medical
Associates, PA,

Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

**APPELLANTS' MOTION FOR PERMISSION TO FILE AMENDED
INITIAL BRIEF EXCEEDING PAGE LIMIT**

Appellants, by and through their undersigned counsel and pursuant to Rule 240, SCACR, move for permission to file a principal brief which exceeds the limit of 50 pages contained in Rule 208(b)(5), SCACR.

PROCEDURAL BACKGROUND

Appellants in this complex, medical malpractice case filed an initial brief on January 22, 2016, that was 79 pages. Appellants simultaneously submitted a motion for permission to file a brief exceeding the page limit. (EXHIBIT 1.)

Respondent filed a return in opposition to the motion on February 1, 2016. (EXHIBIT 2.)

Appellants filed a reply to Respondent's return on February 8, 2016. (EXHIBIT 3.)

The Court of Appeals by order filed March 14, 2016, denied Appellants' motion, stating that the "issues on appeal do not demand a brief of this length." The Court directed Appellants to file an amended initial brief of no more than 50 pages. (EXHIBIT 4.)

Appellants on April 1, 2016, filed an amended initial brief of 64 pages and simultaneously submitted a second motion for permission to file a brief exceeding the page limit. (EXHIBIT 5.) The amended initial brief is attached as EXHIBIT A to Appellants' Motion to Certify this Appeal for Review from the Court of Appeals.

Respondent filed a return in opposition to the motion (EXHIBIT 6) and a motion to dismiss the appeal on April 11, 2016 (EXHIBIT 7).

Appellants filed a reply to Respondent's return and a return in opposition to Respondent's motion to dismiss the appeal on April 18, 2011. (EXHIBIT 8.)

Respondent filed a reply to Appellant's return on the motion to dismiss the appeal on April 21, 2011. (EXHIBIT 9.)

The Court of Appeals by order filed June 1, 2016, denied Appellants' motion. The Court of Appeals deemed the second motion to file a longer brief to be a motion for reconsideration and declined to consider it pursuant to Rule 240(i), SCACR. The Court of Appeals directed Appellants to file an initial brief of no more than 50 pages within 15 days. (EXHIBIT 10.)

Appellants by separate motion dated June 10, 2016, have asked the Supreme Court to certify this case for review from the Court of Appeals pursuant to Rule 204(b), SCACR, due to the existence of one or more novel legal issues of major importance or significant public interest. In conjunction with that motion, Appellants also move this Court to allow them to file an initial brief exceeding the page limit by 14 pages.

ARGUMENT

Appellants submit that the page-limit rule was never intended to be applied in a manner which deprives an appellant of the opportunity to raise all necessary facts, issues and law and explain the prejudice and error resulting from the trial court's actions.¹

Appellants raise four post-trial issues in their appeal of a defense verdict in this medical malpractice case. Appellants believe the first issue raised is a novel issue of major importance and interest in South Carolina and consequently requires extended discussion of the law: Whether the trial judge erred in ruling that comparative negligence law dictates Appellant Jeanne Ethier recover nothing on her loss of consortium claim when the directly injured spouse, Appellant Philip Ethier, recovered nothing because he was found more negligent than Respondent. The jury awarded Mrs. Ethier \$250,000, but the trial judge ruled she gets nothing because the jury found Mr. Ethier 70% at fault.

Appellants further submit this case presents novel and unusually egregious acts of juror misconduct during voir dire and in premature and actual deliberations. It is necessary for Appellants to exceed the page limit in order to adequately explain the trial testimony and evidence, as well as the facts, law and arguments related to the rogue juror's actions during distinct phases of the trial and deliberations.

After the Court of Appeals ordered Appellants to cut the brief, counsel carefully and repeatedly reviewed and modified the original initial brief. Significant portions of the brief were deleted and it was reorganized in an effort to comply with the Court of Appeals' order and the

¹ Appellants are not aware of any case law addressing Rule 208(b)(5), which states:

(5) Length of Briefs. Except in cases in which a sentence of death has been imposed, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five (25) pages. On motion, the appellate court may grant a party permission to exceed those limitations.

50-page limit. After diligent effort and thought, counsel reduced the length of the brief by 15 pages.

The amended, 64-page brief rejected by the Court of Appeals consists of the following:

- Statement of the Issues on Appeal (1 page);
- Statement of the Case (about 1 page);
- Statement of Facts describing testimony and evidence presented in the seven-day trial (9½ pages);
- Standard of Review (<1 page);
- A description of the law on the validity of the verdict awarding damages to Mrs. Ethier on her loss of consortium claim, including discussion and citation of the law in South Carolina and other states on the nature of a loss of consortium claim and whether the injured spouse's negligence affects a verdict awarding damages to the other spouse on a consortium claim, and Appellants' arguments regarding this issue (14½ pages);
- A description of the facts surrounding the rogue juror's actions in concealing her work relationship and personal knowledge of Respondent and two testifying nurse witnesses during jury selection, citation of applicable law, and Appellants' arguments on this issue (15½ pages);
- A description of the facts surrounding the rogue juror's unlawful and prejudicial lobbying efforts on behalf of Respondent and the testifying nurse witnesses in the jury room during premature deliberations, citation of applicable law, and Appellants' arguments on this issue (13 pages); and

ignores the trial testimony and evidence, as if a door had slammed shut on all things occurring before the jury returned its verdict and cannot be mentioned on appeal.

Respondent certainly would enjoy a strategic advantage if Appellants are not allowed to fully present the necessary facts, law and arguments. If Appellants are forced to submit a brief with an insufficient explanation of trial testimony or arguments, or an insufficient description of the factual record as it pertains to different phases of the trial, such that the Court is not able to adequately understand the unlawful and prejudicial impact of the rogue juror's actions and place them in the context of what happened at trial, that would accrue only to Respondent's benefit.

In his returns submitted to the Court of Appeals, Respondent never has asserted or even tried to assert that he is in any way aggrieved or prejudiced by a brief which exceeds the page limit. That is because there plainly is no prejudice. Cf. Rule 201, SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal.").

Given that, why has Respondent so vigorously attacked Appellants on the application of an arbitrary page limit and even urged the nuclear option of dismissing the appeal? Why has Respondent resorted to counting words and footnotes and even accused counsel of trying to mislead the Court of Appeals? (EXHIBIT 6, Resp. Return and EXHIBIT 7, Resp. Motion to Dismiss Appeal.)

The answer is simple. Respondent wished to convince the Court of Appeals to apply a technical rule to force Appellants to further eliminate discussion of the facts, issues, law and arguments. Respondent wished to blunt Appellants' ability and opportunity to raise and fully address the merits of novel and multiple issues in a complex, medical malpractice case. If allowed, Respondent's tactics can only accrue to his benefit and will unfairly and unnecessarily prejudice Appellants' right to pursue their appeal.

Appellants submit that the purpose of an appeal is not to count words and footnotes like an accountant tallying up columns of numbers, but to address and consider the law and the issues on the merits. There is no requirement that a certain number of words be cut or a certain number of footnotes be used in complying with a page limit. Appellants have explained in detail the contents of their amended brief and why it was necessary to exceed the page limit.

No judge is a mind reader. The Court will only know what the parties tell it about this case and will only consider what it is asked to consider. As Chief Judge Sanders so famously put it in 1984, "appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), rev'd on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985).

Consequently, it is Appellants' right and burden to present a sufficient record of the facts and evidence, a sufficient description of the law, and sufficient, persuasive arguments to convince the Court of errors below.

Respondent's motion to dismiss the appeal is utterly without merit. Appellants have not violated the spirit or the letter of the rules or the Court's order. Rule 208(b)(5) explicitly allows the Court to grant a party's request to submit a brief longer than 50 pages. After significantly reducing the length of the brief but still necessarily exceeding the page limit, Appellants certainly were entitled to ask the Court of Appeals to allow them to exceed that limit in an amended brief. However, the Court of Appeals ruled the motion was one for reconsideration and declined to consider it.

In sum, Appellants' counsel have done their best to comply with the 50-page limit. While significantly reducing the length of the brief by 15 pages, counsel have not been able to comply with the limit. It is counsel's studied judgment that further deletions of the facts, law

and arguments would be extremely prejudicial to Appellants' presentation of their case as well as a violation of counsel's duty to serve as a vigorous and effective advocate.

Accordingly, Appellants ask that the Court grant permission for them to file an amended initial brief containing 64 pages. Appellants also ask that the Court deny Respondent's motion to dismiss the appeal.

Respectfully submitted,



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Attorneys for Appellants

June 10, 2016

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

Philip Ethier and Jeanne Ethier,
Appellants,
v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.; Tuomey
Medical Professionals, Inc; and Pee Dee Emergency Medical
Associates, PA,

Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

PROOF OF SERVICE

I, the undersigned lawyer or employee in the offices Proffitt & Cox, LLP, Attorneys for Appellants, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading: Appellants' Motion for Permission to File Amended Initial
Brief Exceeding Page Limit

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EXHIBIT 1

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

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JAN 22 2016

SC Court of Appeals

Appellate Case No. 2015-001964

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v.

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Medical Professionals, Inc; and Pee Dee Emergency Medical
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Of whom Guy R. Bibeau, M.D., is the Respondent.

**APPELLANTS' MOTION FOR PERMISSION TO FILE BRIEF
EXCEEDING PAGE LIMIT**

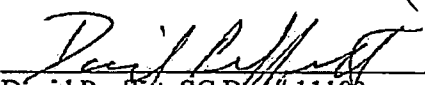
Appellants, by and through their undersigned counsel and pursuant to Rules 240 and 263(b), SCACR, move for permission to file a principal brief which exceeds the limit of 50 pages contained in Rule 208(b)(5), SCACR. The initial brief submitted by Appellants is 79 pages, excluding the table of contents and table of authorities.

Appellants raise four post-trial issues in their appeal of a defense verdict in this medical malpractice case. Appellants believe the first issue raised is a novel one in South Carolina – whether the trial judge erred in ruling that comparative negligence law dictates Appellant Jeanne Ethier recover nothing on her loss of consortium claim when the directly injured spouse,

Appellant Philip Ethier, recovered nothing because he was found more negligent than Respondent.

Appellants further submit this case presents novel and unusually egregious acts of juror misconduct during voir dire and in premature and actual deliberations. It is necessary for Appellants to exceed the page limit in order to adequately explain the trial testimony and evidence, as well as the facts, law and arguments related to the post-trial issues.

Respectfully submitted,


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Attorneys for Appellants

January 21, 2016

EXHIBIT 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-20-0012

Philip Ethier and Jeanne Ethier, Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and
Pee Dee Emergency Medical Associates, P.A., Defendants

Of whom, Guy R. Bibeau, M.D. is the Respondent.

**RESPONDENT'S RETURN TO APPELLANTS'
MOTION TO EXCEED PAGE LIMITATIONS**

The Appellants have filed a motion pursuant to Rule 208(b)(5), SCACR, to allow them to exceed the fifty-page limitation for their initial brief. The Respondent Guy R. Bibeau, M.D. opposes that motion.

Rule 208(b)(5), SCACR, establishes a fifty-page limitation for all principal briefs except in death penalty cases. The rule does provide that "[o]n motion, the appellate court may grant a party permission to exceed those limitations." See, Rule 208(b)(5), SCACR. Neither the rule nor any authority from the appellate courts have set forth the applicable standard that must be satisfied in order to exceed the page limitation.

In their motion, the Appellants request to exceed the fifty-page limitation by 29 pages "in order to adequately explain the trial testimony and evidence, as well as the facts, law and arguments related to the post-trial issues." However, that explanation is conclusory and fails to specify any valid basis for allowing a 79-page brief in this case. In actuality, the Appellants' initial brief contains substantial information that is immaterial as well as redundant.

For example, the Court will notice that the Appellants include an eleven-page Statement of Facts and then includes another "Facts" section for *each* of the four issues on appeal. The initial Statement of Facts section is entirely unnecessary because it addresses the trial testimony; yet, *none of the issues on appeal go to the factual merits of the case itself including the medicine involved or the expert opinions offered.* Instead, the Appellants' first issue pertains to whether Mrs. Ethier is entitled to a verdict on her loss of consortium claim despite the jury's finding that Mr. Ethier was seventy percent negligent. The Appellants are not challenging the finding of seventy percent fault on the part of Mr. Ethier. Thus,

the Appellants have presented purely a legal question that is not dependent on any factual background or discussion.

Moreover, the three other issues on appeal address alleged juror misconduct by one single juror during voir dire, the trial, and deliberations. None of these issues are complex, either factually or legally, and do not warrant a 79-page brief. Certainly, there is no need for an eleven-page Statement of Facts, followed by additional "Facts" sections totaling another fifteen pages or so. The Appellants' legal arguments on these issues could have been easily presented within the 50-page limit, and they have presented no reasonable explanation as why that is not the case. Under the circumstances, Dr. Bibeau submits that the Appellants should not be allowed to exceed the fifty-page limitation in their initial brief.

For the foregoing reasons, the Respondent Guy R. Bibeau, M.D. respectfully requests that the Court deny the Appellants' motion to exceed the fifty-page limitation for their initial brief.

Respectfully submitted,

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Counsel for Respondent Guy R. Bibeau, M.D.

Columbia, South Carolina

February 1, 2016

EXHIBIT 3

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FEB 11 2016
BY PROFFITT & COX, LLP

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Date: 2/11/16
Proffitt & Cox, LLP

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
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Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

**APPELLANTS' REPLY TO RESPONDENT'S RETURN
TO APPELLANTS' MOTION FOR PERMISSION TO FILE BRIEF
EXCEEDING PAGE LIMIT**

Appellants, by and through their undersigned counsel and pursuant to Rule 240, submit their reply to Respondent's return opposing Appellants' motion to file an initial brief exceeding the 50-page limit.

Respondent asserts that Appellants' initial brief contains immaterial and redundant information. Specifically, Respondent asserts there is no reason for a Statement of Facts which explains the trial testimony, plus additional facts for each of the four issues on appeal.

Respondent contends that none of the issues on appeal go to the factual merits of the case, and that purely legal questions are involved.

Respondent is absolutely wrong.

As explained in their motion, Appellants believe the first issue raised is a novel one in South Carolina – whether the trial judge erred in ruling that comparative negligence law dictates Appellant Jeanne Ethier recover nothing on her loss of consortium claim when the directly injured spouse, Appellant Philip Ethier, recovered nothing because he was found more negligent than Respondent. Appellants' arguments and explanation of law, both in South Carolina and elsewhere, are necessary.

Appellants further submit this case presents novel and unusually egregious acts of juror misconduct during voir dire and in premature and actual deliberations. It is necessary for Appellants to exceed the page limit in order to adequately explain the trial testimony and evidence, as well as the facts, law and arguments related to the post-trial issues.

The four issues on appeal are not "purely legal." Legal issues are decided in the context of events, facts and testimony occurring at trial. In this complex, medical malpractice case, Appellants must present a sufficient explanation of the factual background at trial because that goes to the very heart of the wrongdoing and error alleged in the issues on appeal.

For example, the unlawful actions and statements of the rogue juror, and her impact on the jury, can be analyzed properly only when the Court understands how her silence during voir dire and her obvious bias and unlawful efforts as a juror worked in favor of Respondent on the crucial issue of credibility. When Appellants argue that they should be granted a new trial because the rogue juror was constantly back in the jury room during the trial saying, "If Dr. Bibeau or Nurse Wadford said they did something, then they did it," the error and prejudice are understood only when the Court knows what "something" she was talking about.

The prejudicial and wrongful impact of the rogue juror's actions simply cannot be argued or understood in the absence of relevant trial testimony and sufficient factual background. The post-trial issues involve events and testimony which occurred *during* the trial and are inextricably linked. The post-trial issues cannot be considered or decided in a vacuum that ignores the trial testimony and evidence, as if a door had slammed shut on all things occurring before the jury returned its verdict and cannot be mentioned on appeal.

Respondent would only benefit, of course, if Appellants were not allowed to fully present their arguments or present a complete or adequate record on appeal. If Appellants had submitted a brief with an insufficient explanation of trial testimony or arguments, or an insufficient record, such that the Court was not able to understand the unlawful and prejudicial impact of the rogue juror's actions and place them in the context of what happened at trial, then Respondent would surely attack Appellants on that ground. See e.g. Zaman v. S.C. Bd. of Medical Examiners, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (refusing to address issue where record did not show what appellant requested, whether it was refused, and if so, why); Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 215, 493 S.E.2d 826, 834 (1997) (appellant has burden of presenting sufficient record for appellate review); Conran v. Joe Jenkins Realty, Inc., 263 S.C. 332, 210 S.E.2d 309 (1974) (appellant has the right to propose the record and designate its contents and burden is on appellant to do so; Court dismissed appeal where appellant failed to include sufficient trial testimony in the record to support his argument on appeal); South Carolina Natl. Bank of Charleston v. B.H. Stepp Co., 248 S.C. 521, 151 S.E.2d 752 (1966) (dismissing appeal where record did not contain testimony necessary to decide issues raised by appellant); Windham v. Honeycutt, 290 S.C. 60, 63, 348 S.E.2d 185, 187 (Ct. App. 1986) ("The burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent

The South Carolina Court of Appeals

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Of whom Guy R. Bibeau, M.D. is the Respondent.

Appellate Case No. 2015-001964

SCANNED

Date: 3/15/16
Proffitt & Cox, LLP

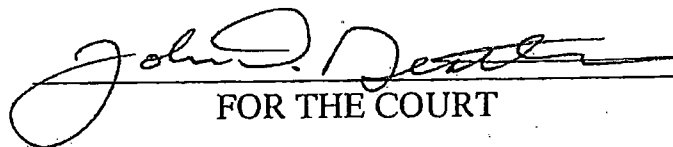
RECEIVED

MAR 15 2016

BY PROFFITT & COX, LLP

ORDER

Appellants have filed a motion to exceed the page limit for their initial brief as set forth in Rule 208(b)(5) of the South Carolina Appellate Court Rules and seek to file a brief seventy-nine pages in length. After careful review of the parties' filings, we find the issues raised on appeal do not demand a brief of this length. Appellants may file an amended brief totaling no more than fifty pages in length. Appellants have thirty days to serve and file the amended brief, and Respondent's brief shall be due thirty days thereafter.


FOR THE COURT

Columbia, South Carolina

cc:

Robert David Proffitt, Esquire
Ronald Brian Cox, Esquire
Andrew F. Lindemann, Esquire
G. Murrell Smith, Jr., Esquire
Stanley Lamont Myers, Sr., Esquire

FILED

March 14, 2016

EXHIBIT 5

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

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Appellants in this complex, medical malpractice case filed an initial brief on January 22, 2016, that was 79 pages. Appellants simultaneously submitted a motion for permission to file a brief exceeding the page limit.

Respondent filed a return in opposition to the motion on February 1, 2016. Appellants filed a reply to Respondent's return on February 8, 2016.

The Court by order filed March 14, 2016, denied Appellants' motion, stating that the "issues on appeal do not demand a brief of this length." The Court directed Appellants to file an amended initial brief of no more than 50 pages.

Appellants on March 31, 2016, filed an amended initial brief of 64 pages.

Appellants raise four post-trial issues in their appeal of a defense verdict in this medical malpractice case. Appellants believe the first issue raised is a novel one in South Carolina and consequently requires extended discussion of the law: Whether the trial judge erred in ruling that comparative negligence law dictates Appellant Jeanne Ethier recover nothing on her loss of consortium claim when the directly injured spouse, Appellant Philip Ethier, recovered nothing because he was found more negligent than Respondent.

Appellants further submit this case presents novel and unusually egregious acts of juror misconduct during voir dire and in premature and actual deliberations. It is necessary for Appellants to exceed the page limit in order to adequately explain the trial testimony and evidence, as well as the facts, law and arguments related to the post-trial issues.

Appellants' counsel have carefully and repeatedly reviewed and modified the original initial brief. Significant portions of the brief were deleted and it was reorganized in an effort to comply with the Court's order and the 50-page limit. After diligent effort and thought, Appellants' counsel have reduced the length of the brief by 15 pages.

The amended brief consists of the following:

- Statement of the Issues on Appeal (1 page);
- Statement of the Case (about 1 page);
- Statement of Facts describing testimony and evidence presented in the seven-day trial (9½ pages);

- Standard of Review (<1 page);
- A description of the law on the validity of the verdict awarding damages to Mrs. Ethier on her loss of consortium claim, including discussion and citation of the law in South Carolina and other states on the nature of a loss of consortium claim and whether the injured spouse's negligence affects a verdict awarding damages to the other spouse on a consortium claim, and Appellants' arguments regarding this issue (14½ pages);
- A description of the facts surrounding the rogue juror's actions in concealing her work relationship and personal knowledge of Respondent and two testifying nurse witnesses during jury selection, citation of applicable law, and Appellants' arguments on this issue (15½ pages);
- A description of the facts surrounding the rogue juror's unlawful and prejudicial lobbying efforts on behalf of Respondent and the testifying nurse witnesses in the jury room during premature deliberations, citation of applicable law, and Appellants' arguments on this issue (13 pages); and
- A description of the facts surrounding the rogue juror's unlawful and prejudicial lobbying efforts on behalf of Respondent and the testifying nurse witnesses in the jury room during actual deliberations, citation of applicable law, and Appellants' arguments on this issue (9 pages).

A primary reason for the need to exceed the page limit is that Appellants must explain and address three sets of facts: (1) facts related to the trial testimony and evidence (9½ pages); (2) facts related to the juror concealment issue (4½ pages); and (3) facts related to the issue of juror misconduct in premature and actual deliberations (7 pages).

As this Court well knows, it is Appellants' right and burden to raise issues and rulings which Appellants believe constitute reversible error by the trial court. It is Appellants' right and burden to present a sufficient record of the facts and evidence, a sufficient description of the law, and sufficient, persuasive arguments to convince the Court of errors below. See e.g. Zaman v. S.C. Bd. of Medical Examiners, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (refusing to address issue where record did not show what appellant requested, whether it was refused, and if so, why); Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 215, 493 S.E.2d 826, 834 (1997) (appellant has burden of presenting sufficient record for appellate review); Conran v. Joe Jenkins Realty, Inc., 263 S.C. 332, 210 S.E.2d 309 (1974) (appellant has the right to propose the record and designate its contents and burden is on appellant to do so; Court dismissed appeal where appellant failed to include sufficient trial testimony in the record to support his argument on appeal); South Carolina Natl. Bank of Charleston v. B.H. Stepp Co., 248 S.C. 521, 151 S.E.2d 752 (1966) (dismissing appeal where record did not contain testimony necessary to decide issues raised by appellant); Windham v. Honeycutt, 290 S.C. 60, 63, 348 S.E.2d 185, 187 (Ct. App. 1986) ("The burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent review."); Colleton County Taxpayers Assn. v. School Dist. of Colleton County, 371 S.C. 224, 638 S.E.2d 685, 694 (2006) (issue is deemed abandoned if the argument in the brief is conclusory); First Savings Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating a party failing to provide arguments or supporting authority for its assertion is deemed to have abandoned the issue); Rule 208(b), SCACR (describing content of brief); Rule 210(h), SCACR (court will not consider facts which do not appear in record).

Appellants further note that, contrary to Respondent's contention, the four issues on appeal are not "purely legal." Legal issues are decided in the context of events, facts and

testimony occurring at trial. In this complex malpractice case, Appellants must present a sufficient explanation of the factual background at trial because that goes to the very heart of the wrongdoing and error alleged in the issues on appeal.

For example, the unlawful actions and statements of the rogue juror, and her impact on the jury, can be analyzed properly only when the Court understands how her silence during voir dire and her obvious bias and unlawful efforts as a juror worked in favor of Respondent on the crucial issue of credibility. When Appellants argue that they should be granted a new trial because the rogue juror was constantly back in the jury room during the trial saying, "If Dr. Bibeau or Nurse Wadford said they did something, then they did it," the error and prejudice are understood only when the Court knows what "something" she was talking about.


The prejudicial and wrongful impact of the rogue juror's actions simply cannot be argued or understood in the absence of relevant trial testimony and sufficient factual background. The post-trial issues involve events and testimony which occurred *during* the trial and are inextricably linked. The post-trial issues cannot be considered or decided in a vacuum that ignores the trial testimony and evidence, as if a door had slammed shut on all things occurring before the jury returned its verdict and cannot be mentioned on appeal.

Respondent certainly would enjoy a strategic advantage if Appellants are not allowed to fully present the necessary facts, law and arguments. If Appellants are forced to submit a brief with an insufficient explanation of trial testimony or arguments, or an insufficient description of the factual record as it pertains to different phases of the trial, such that the Court is not able to adequately understand the unlawful and prejudicial impact of the rogue juror's actions and place them in the context of what happened at trial, that would accrue only to Respondent's benefit.

Appellants note that Respondent has not asserted that he is somehow prejudiced by a brief which exceeds the page limit and, of course, there is no such prejudice. Furthermore, the Rules specifically contemplate the filing of a brief exceeding the page limit.

In sum, Appellants' counsel have done their best to comply with the Court's order and the 50-page limit. However, while significantly reducing the length of the brief by 15 pages and even cutting into the bones of the case, counsel have not been able to comply with the limit. It is counsel's studied judgment that further deletions of the facts, law and arguments would be extremely prejudicial to Appellants' presentation of their case as well as a violation of counsel's duty to serve as a vigorous and effective advocate. Accordingly, Appellants ask that the Court grant permission for them to file an amended initial brief containing 64 pages.

Respectfully submitted,


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Attorneys for Appellants

March 31, 2016

EXHIBIT 6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-20-0012

Philip Ethier and Jeanne Ethier, Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and
Pee Dee Emergency Medical Associates, P.A., Defendants

Of whom, Guy R. Bibeau, M.D. is the Respondent.

**RESPONDENT'S RETURN IN OPPOSITION TO APPELLANTS'
MOTION TO EXCEED PAGE LIMITATIONS AND
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL**

The Appellants have filed a second motion pursuant to Rule 208(b)(5), SCACR, to allow them to exceed the fifty-page limitation for their initial brief.

The Respondent Guy R. Bibeau, M.D. opposes that motion and further moves for the dismissal of this appeal for the reasons discussed below.

By way of background, on January 21, 2016, the Appellants filed an Initial Brief totaling 79 pages in length, together with a Motion for Permission to File Brief Exceeding Page Limit. Dr. Bibeau filed an opposition to that motion on February 1, 2016. Thereafter, on March 14, 2016, this Court issued an Order denying the Appellants' motion. This Court specifically found that "the issues raised on appeal do not demand a brief of this length." This Court further directed that "Appellants may file an amended brief *totaling no more than fifty pages in length*" and gave them thirty days to file an Amended Initial Brief. *See*, Order filed March 14, 2016. (Emphasis added).

On March 31, 2016, the Appellants filed an Amended Initial Brief *totaling 64 pages in length*, together with another Motion for Permission to File Amended Initial Brief Exceeding Page Limit. Dr. Bibeau opposes that motion and further submits that the Appellants' blatant disregard for the Court's Order filed March 14, 2016, and their lack of candor about the reduction of 15 pages from the original brief warrant the dismissal of this appeal as an appropriate sanction.

In their current motion, the Appellants claim that their counsel "carefully and repeatedly reviewed and modified the original initial brief" and that "[s]ignificant portions of the brief were deleted." Counsel even claims to have

"cut[] into the bones of the case ... [but] have not been able to comply with the limit." Despite what is described as "diligent effort and thought," counsel was only able to reduce the original brief by 15 pages. The Appellants' lack of candor with the Court in this respect is troubling.

A review of the two briefs reveals the following:

1. A total of only 1563 words was deleted from the original brief. That is not "significant portions." The deleted sentences are included in Appendix A to this return so that the Court can clearly consider the minimal amount of text that was actually deleted.¹

2. The Appellants used several techniques to reduce the brief by 15 pages, including primarily the conversion of substantial amounts of text to lengthy, single-spaced footnotes and the single spacing of two sections of the brief.²

3. The original brief contained 14 footnotes. The amended brief now has a total of 34 footnotes. Each of the 20 "new" footnotes consist of text from the original brief that was converted to single-spaced footnotes. Several of the "new"

¹ The original brief includes approximately 23,368 words of text and footnotes, and the amended brief includes approximately 21,805 words of text and footnotes. Thus, to put it in proper context, the deletion of 1563 words represents less than seven percent of the original content.

² The Appellants also used shorter abbreviations in referencing the record and stopped the practice of starting each new section of the brief on a new page. There is nothing wrong with those techniques to reduce the number of pages, but Dr. Bibeau calls this to the Court's attention only to further make the point that the Appellants did not delete "significant portions" of the brief (as claimed) in order to reduce it by 15 pages in length.

footnotes are of substantial length, each encompassing more than a page of text from the original brief. The Court is referred to footnotes 7, 10, 14, and 34 in the amended brief as examples. There are numerous other "new" footnotes that contain a half-page or more of text from the original brief. None of the "new" footnotes actually contains new or rewritten language not previously included in text of the original brief. Clearly, the conversion of text to footnotes is the technique utilized to achieve a majority of the 15-page reduction.

4. As indicated, the Appellants also made two sections of the brief single-spaced where they were double-spaced in the original brief. The Court is referred to the sections entitled "Statement of Issues on Appeal" and "Standard of Review" where that technique was used.

In sum, the Appellants totally disregarded this Court's express direction that the amended brief shall total "no more than fifty pages in length." *See*, Order filed March 14, 2016. Yet, even in trying to now submit a 64-page brief, the Appellants made little effort to reduce the total content of the brief. Instead, the Appellants relied on converting large amounts of text to footnotes and other measures which did not reduce the content by any significant measure. The Appellants not only violated the letter of this Court's Order but its spirit as well. The Appellants are absolutely disingenuous in advising this Court that "significant portions" of the original brief were deleted; the reality is "significant portions" of the original brief

were converted to footnotes. A total of 1563 words deleted from a 79-page brief is hardly "significant portions." The so-called "reorganization" of the brief by the Appellants, together with the fact that a 64-page brief still far exceeds the allowable page limit by 14 pages, warrants serious sanction including the dismissal of this appeal.

In their latest motion, the Appellants continue to argue that the issues raised on appeal require a brief in excess of the 50-page limit established by Rule 208(b)(5), SCACR. This Court has already considered such arguments and rejected them in previously directing the Appellants to file "an amended brief totaling no more than fifty pages in length." *See also*, Order filed March 14, 2016 (this Court found that "the issues raised on appeal do not demand a brief of this length"). In addition, the Appellants cite to numerous cases that require an appellant to furnish a sufficient record for review. However, the Appellants fail to understand the difference between the brief and the Record on Appeal. The adequate record for review must be contained in the Record on Appeal; it need not be re-stated or even summarized in detail in the brief in order to satisfy an appellant's duty to provide an adequate record.

For the foregoing reasons, the Respondent Guy R. Bibeau, M.D. respectfully requests that the Court deny the Appellants' latest motion to exceed the fifty-page limitation for their initial brief. Dr. Bibeau further requests that the Court strike

the Amended Initial Brief and dismiss the appeal as a sanction for violating the letter and spirit of Rule 208(b)(5), SCACR, and this Court's Order filed March 14, 2016.

Respectfully submitted,

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Columbia, South Carolina

April 11, 2016

APPENDIX A

Deleted from page 5 of Initial Brief of Appellant:

The following is a description of relevant trial testimony. Additional facts pertinent to each post-trial issue are discussed below.

Deleted from page 7 of Initial Brief of Appellant:

Mr. Ethier testified that after returning to work at the hospital in December 2011 after recovering from surgery, when he saw Respondent for the first time at the ED nurses' station, Respondent "turned around and looked at me and said, no wonder I couldn't figure out what was going on." Mr. Ethier testified the statement shocked and angered him, upsetting him so much that he nearly passed out, but he just walked away. Respondent denied making the statement.

Deleted from page 23 of Initial Brief of Appellant:

The jury's verdict in favor of Mrs. Ethier and the award of damages of \$250,000 to her are proper.

Deleted from page 25 of Initial Brief of Appellant:

The jury's verdict in favor of Mrs. Ethier and the award of damages of \$250,000 to her are proper.

Deleted from page 28 of Initial Brief of Appellant:

The jury's verdict in favor of Mrs. Ethier and the award of damages of \$250,000 to her are proper.

Deleted from pages 29-30 of Initial Brief of Appellant:

See also McCracken v. Government Employees Ins. Co., 325 S.E.2d 62, 64, 284 S.C. 66, 69 (1985) (noting coverture has long been abolished and "in South Carolina, the acts of one spouse are not, as a matter of law, imputed to the other spouse"; thus innocent spouse could recover fire insurance policy proceeds where other spouse intentionally had burned the property); McCall v. Batson, 207 S.E.2d 91, 93, 262 S.C. 657, 661 (1974) (stating that the "common-law theory of unity or identity of the spouses and the disability of coverture, insofar as they affect litigation have long since been completely abolished in this jurisdiction" by statute; therefore, usual statute of limitations applied to wife's claim against husband).

Deleted from page 34 of Initial Brief of Appellant:

In this case, the jury found Respondent's negligence caused Mrs. Ethier's damages. Each Appellant's action is separate and independent, and the jury clearly and properly awarded damages to Mrs. Ethier for loss of consortium as a result of Respondent's negligence. The law of

comparative negligence is irrelevant and inapplicable to her claim. The negligence of Mr. Ethier as determined by the jury is not imputed to her and has no impact on her award. The jury's verdict in favor of Mrs. Ethier and the award of damages of \$250,000 to her are proper.

Deleted from pages 42-43 of Initial Brief of Appellant:

The State argues that because respondent has not shown that he was prejudiced by Juror B's responses, the Court of Appeals' decision [granting the defendant new trial] was erroneous. We disagree. The test pronounced in *Thompson v. O'Rourke, supra*, makes clear that *where a juror's response to voir dire amounts to an intentional concealment, the movant need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where the juror's failure to disclose information is "without justification," i.e., intentional, the juror's bias will be inferred.* Conversely, where the failure to disclose is innocent, no inference of bias can be drawn.

Deleted from pages 49-50 of Initial Brief of Appellant:

Killian intentionally concealed information by failing to respond to direct, straightforward, unambiguous questions. Bias of the juror is inferred and a new trial is required because the information concealed by Killian would have supported a challenge for cause or would have been a material factor in the use of Appellants' peremptory challenges.

Given the fact that Killian sat silently when the jury pool was asked direct, straightforward, unambiguous questions about personal, business or working relationships with any party or witness, Appellants were unaware that Killian personally knew and had personally worked with Respondent or the nurses. Given the fact that Killian sat silently when the jury pool was asked direct, straightforward, unambiguous questions whether anyone had any bias or prejudice for or against any party, Appellants were unaware that Killian harbored a bias or prejudice in favor of Respondent and the nurses. See State v. Galbreath, 359 S.C. 398, 404, 597 S.E.2d 845, 848 (Ct. App. 2004) (juror's decision not to respond to question about being fair and impartial to all parties suggests that juror felt she could be fair and impartial). Appellants were entitled to rely on the truthfulness of prospective jurors' responses, as well as their non-responses, during voir dire. See Gullledge, 277 S.C. at 371, 287 S.E.2d at 490 ("Necessarily, it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason.")

Deleted from page 51 of Initial Brief of Appellant:

See Woods, 345 S.C. 587-89, 550 S.E.2d 282 (when a case involves unintentional concealment, a new trial will be granted where the moving party can show prejudice resulting from the juror's failure to respond. "If a juror intentionally withholds material information requested on voir dire, bias and prejudice are inferred from such concealment. . . . Only where a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial court inquire into prejudice.") (quoting Doyle v. Kennedy Heating & Service, Inc., 33 S.W.3d 199, 201 (Mo. Ct. App. 2000) (emphasis in original).

Deleted from page 52 of Initial Brief of Appellant:

Juror Linda Albowicz testified that Killian at one point even confessed she did not believe she should be on the jury. "She let us know that she wasn't sure how she got chosen to be on the jury because she worked with everybody. . . . We explained to her when she was asked if this would, you know, prevent her from rendering a non-bias[ed] judgment that was her opportunity to get out of it. She should have answered in the affirmative," Albowicz testified. "But she didn't?" the trial judge asked. "No, she didn't," Albowicz replied.

Deleted from page 64 of Initial Brief of Appellant:

When the fact of premature deliberations becomes known after the jury's verdict, the Supreme Court held that the trial court may consider affidavits. If the trial court finds the affidavits credible, and indicative of premature deliberations, an evidentiary hearing should be held to assess whether such deliberations in fact occurred, and whether they affected the verdict. At such an evidentiary hearing, the trial court may, upon request of the moving party, reassemble the jurors and conduct voir dire to ascertain the nature and extent of the premature deliberations. If the court determines the misconduct did not occur, or that it was not prejudicial, adequate findings should be made so that the determination may be reviewed. Aldret, 333 S.C. at 315-16, 509 S.E.2d 811.

Deleted from page 68 of Initial Brief of Appellant:

Beginning on the second or third day of the trial, Teressa began saying in the jury room during breaks that she personally knew Dr. Guy Bibeau and had worked with him for about three years.

Beginning on the second or third day of the trial, Teressa began saying in the jury room during breaks that she personally knew the nurse, "Jeri," and had worked with her for about three years. I know that Teressa, when she referred to "Jeri," meant Jerilyn Wadford, the registered nurse who testified at trial. It was clear to me that "Jeri" was Nurse Wadford who testified at trial.

Deleted from pages 69-70 of Initial Brief of Appellant:

Carmichael testified that at the beginning of deliberations, she believed that Respondent was more at fault than Mr. Ethier, and that several other jurors expressed the same opinion. "However, Teressa repeatedly stated her opinions about knowing Dr. Bibeau and Jeri personally, and that she had worked with them for three years, and that they were very careful and thorough. Teressa's statements, which she had made so often and so firmly and which she made during deliberations, were a big reason that I eventually changed my mind and became persuaded that Mr. Ethier was more negligent than Dr. Bibeau." Carmichael verified the accuracy of her affidavit and offered the same testimony at the juror evidentiary hearing held after the trial. Carmichael testified that Killian's statements affected her verdict and the verdict of several other jurors during deliberations, as set forth in detail above in Section III. "I just felt like she kept on saying it over and over once we started deliberating to sway other jurors to her side Doctor Bibeau as far as his reputation or whatever, you know," Carmichael testified.

As discussed in Section III, other jurors' testimony at the hearing and the trial judge's findings establish without doubt that Killian did make the reported statements before deliberations began, although every juror did not hear or recall every statement. Other jurors' testimony strongly corroborates Carmichael's detailed testimony about Killian's misconduct and the premature deliberations.

Carmichael and eight other jurors recalled Killian talking about working at the hospital with Respondent and the nurses. Carmichael and three other jurors testified that Killian vouched for the skill or proficiency of the doctor and nurses. Carmichael and three other jurors testified that Killian vouched for the truthfulness or credibility of the doctor and nurses. Carmichael and three other jurors testified that Killian talked about the red-haired, white lady.

Deleted from page 73 of Initial Brief of Appellant:

Aside from Killian herself, Carmichael was the only juror to testify that Killian's misconduct affected her verdict based on Killian's statements made prematurely and during deliberations. However, the effect on even a single juror's verdict is enough to prove prejudice because one juror can change the verdict or even cause a hung jury.

Deleted from pages 77-78 of Initial Brief of Appellant:

Appellants were greatly prejudiced because Killian's own verdict was affected by her bias and alleged insider knowledge. Carmichael testified that Killian's statements affected her verdict, and the effect on a single juror's verdict is enough to prove prejudice. One juror can change the entire verdict or even cause a hung jury.

EXHIBIT 7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-20-0012

Philip Ethier and Jeanne Ethier, Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and
Pee Dee Emergency Medical Associates, P.A., Defendants

Of whom, Guy R. Bibeau, M.D. is the Respondent.

MOTION TO DISMISS APPEAL

The Respondent Guy R. Bibeau, M.D. moves this Court pursuant to Rule 260(a), SCACR, to dismiss the Appellant's appeal as a sanction for violating the letter and spirit of Rule 208(b)(5), SCACR, and this Court's Order filed March 14, 2016.

The grounds for this motion are set forth in more detail in the supporting memorandum filed herewith.

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Counsel for Respondent Guy R. Bibeau, M.D.

Columbia, South Carolina

April 11, 2016

EXHIBIT 8

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-001964

RECEIVED
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SC Court of Appeals

Philip Ethier and Jeanne Ethier,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.; Tuomey
Medical Professionals, Inc; and Pee Dee Emergency Medical
Associates, PA,

Defendants,

Of whom Guy R. Bibeau, M.D., is the Respondent.

**APPELLANTS' REPLY TO RESPONDENT'S RETURN
TO APPELLANTS' MOTION FOR PERMISSION TO FILE AMENDED BRIEF
EXCEEDING PAGE LIMIT
AND
APPELLANTS' RETURN IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS APPEAL**

Appellants, by and through their undersigned counsel and pursuant to Rule 240, submit their reply to Respondent's return opposing Appellants' motion to file an initial brief exceeding the 50-page limit. Appellants also submit their return to Respondent's motion to dismiss the appeal.

In his returns to the present and prior motions to exceed the page limit, Respondent never has asserted or even tried to assert that he is in any way aggrieved or prejudiced by a brief which

exceeds the page limit. That is because there plainly is no prejudice. Cf. Rule 201, SCACR (“Only a party aggrieved by an order, judgment, sentence or decision may appeal.”).

Given that, why does Respondent so vigorously attack Appellants on the application of an arbitrary page limit and even urge the nuclear option of dismissing the appeal? Why does Respondent now resort to counting words and footnotes and even accuse counsel of trying to mislead this Court?

The answer is simple. Respondent wishes to convince this Court to apply a technical rule to force Appellants to further eliminate discussion of the facts, issues, law and arguments. Respondent wishes to blunt Appellants’ ability and opportunity to raise and fully address the merits of novel and multiple issues in a complex, medical malpractice case. If allowed, Respondent’s tactic can only accrue to his benefit and will unfairly and unnecessarily prejudice Appellants’ right to pursue their appeal.

Appellants submit that the page-limit rule was never intended to be applied in a manner which deprives an appellant of the opportunity to raise all necessary issues and explain the prejudice and error resulting from the trial court’s actions.

Respondent openly ridicules Appellants’ effort to reduce the length of the brief and even goes so far as to accuse Appellants of a lack of candor with the Court. Appellants flatly reject Respondent’s spurious and offensive contentions. Respondent’s counsel are welcome to express their view about the revisions to the brief, but a difference of opinion about the extent of the revisions is no ground to defame opposing counsel by trying to paint them as underhanded. That accusation is absolutely offensive and inappropriate. The Court has the original and amended briefs, and there is nothing secret about either of them or the revisions made.

It is Appellants' belief that it absolutely was necessary to cut into the bones of the case in an effort to comply with the Court's order. Appellants do not seek to waste the Court's time or cause undue work, but they raise novel and multiple issues which require adequate explanation of the facts, citation of law and argument, as explained in Appellants' motion.

The purpose of an appeal is not to count words and footnotes like an accountant tallying up columns of numbers, but to address and consider issues on the merits. There is no requirement that a certain number of words be cut or a certain number of footnotes be used in complying with a page limit. Appellants in their motion explained in detail the contents of their amended brief and why it was necessary to exceed the page limit.

No judge is a mind reader. The Court will only know what the parties tell it about this case and will only consider what it is asked to consider. As Chief Judge Sanders so famously put it in 1984, "appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984), rev'd on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985).

Consequently, it is Appellants' right and burden to raise issues and rulings which Appellants believe constitute reversible error by the trial court. It is Appellants' right and burden to present a sufficient record of the facts and evidence, a sufficient description of the law, and sufficient, persuasive arguments to convince the Court of errors below.

Respondent's motion to dismiss the appeal is utterly without merit. Appellants have not violated the spirit or the letter of the rules or the Court's order. Rule 208(b)(5), SCACR, explicitly allows the Court to grant a party's request to submit a brief longer than 50 pages. After significantly reducing the length of the brief but still necessarily exceeding the page limit,

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EXHIBIT 9

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-20-0012

Philip Ethier and Jeanne Ethier, Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and
Pee Dee Emergency Medical Associates, P.A., Defendants

Of whom, Guy R. Bibeau, M.D. is the Respondent.

**REPLY TO APPELLANTS' RETURN TO
MOTION TO DISMISS APPEAL**

The Respondent Guy R. Bibeau, M.D. filed a motion pursuant to Rule 260(a), SCACR, to dismiss the Appellant's appeal as a sanction for violating the letter and spirit of Rule 208(b)(5), SCACR, and this Court's Order filed March 14, 2016. The

EXHIBIT 10

The South Carolina Court of Appeals

Philip Ethier and Jeanne Ethier, Appellants,

v.

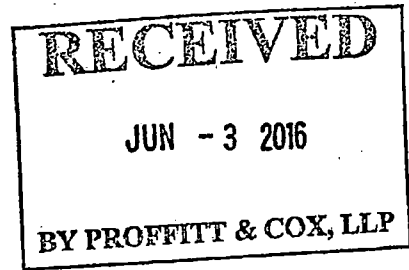
Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and Pee Dee
Emergency Medical Associates, PA, Defendants,

Of whom Guy R. Bibeau, M.D. is the Respondent.

Appellate Case No. 2015-001964

SCANNED
Date: 6/3/16
Proffitt & Cox, LLP

ORDER



On March 14, 2016, this court denied Appellants' motion to exceed the page limits for their initial brief and ordered Appellants to serve and file an amended brief totaling no more than fifty pages within thirty days. On April 1, 2016, Appellants filed a new motion to exceed the page limits for their initial brief. We construe the new motion as a request for the court to reconsider its decision and, consequently, we decline to entertain the motion. *See* Rule 240(i), SCACR ("The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal."). Within fifteen days of the date of this order, Appellants shall serve and file an amended brief that complies with Rule 208(b), SCACR, and does not exceed fifty pages in length.

Respondent has also filed a motion to dismiss, which this court will consider on receipt of Appellants' initial brief or the expiration of the fifteen days.



FOR THE COURT

Columbia, South Carolina

cc: Robert David Proffitt, Esquire
Ronald Brian Cox, Esquire
Andrew F. Lindemann, Esquire
G. Murrell Smith, Jr., Esquire
Stanley Lamont Myers, Sr., Esquire

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HAND-DELIVERED

June 10, 2016

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

JUN 10 2016

SC Court of Appeals

RE: Philip Ethier and Jeanne Ethier v. Guy R. Bibeau, M.D.
Appellate Case No. 2015-001964
PC File No. 1236.01

Dear Mr. Shearouse:

Please find enclosed the original and seven copies of the following:

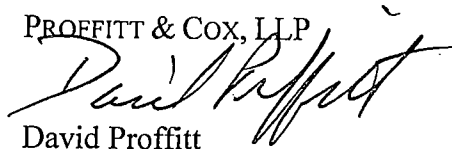
- Appellants' Motion to Certify Appeal for Review from Court of Appeals, with Exhibit A; and
- Appellants' Motion for Permission to File Amended Initial Brief Exceeding Page Limit, with Exhibits 1 to 10.

Please file the originals and return the date-stamped copies to me.

With kindest personal regards, I remain

Sincerely yours,

PROFFITT & COX, LLP



David Proffitt

RDP/nif
Enclosures

cc: The Honorable Jenny Abbott Kitchings (w/ enclosures)
Andrew F. Lindemann (w/ enclosures)
G. Murrell Smith, Jr. (w/ enclosures)
David Holler (w/ enclosures)
Stanley L. Myers (w/ enclosures)